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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

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PEGGY LOU RIKER and FREDA H. GRASSMEE,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,
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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

Peggy Lou Riker and Freda H. Grassmee herewith petition the Supreme Court of the United States for a writ of certiorari, and show:

The decision of the Circuit Court of Appeals, Ninth Circuit, in *Peggy Lou Riker* and *Freda H. Grassmee, appellants v. Commissioner of Internal Revenue, appellee,* was filed by that Court on April 12, 1957 and the judgment therein adverse to your petitioners was made April 12, 1957.

The decision of that Court is unofficially reported in CCH 1957 Standard Federal Tax Reports 9588 (April 12, 1957) but not yet reported in the Federal

Reporter advance sheets. The Tax Court decision in said matter is unofficially reported in 17 TCM 903, and printed in full at pages 79-97 in the printed record of that Ninth Circuit Case No. 15072.

The cases originated in the United States Tax Court, were consolidated in that tribunal, and appealed from an adverse determination and decision to the Ninth Circuit, and jurisdiction of the Supreme Court is authorized by 26 USCA 7482 and 28 USCA 1254. The decision and judgment in the Ninth Circuit case is dated April 12, 1957 and printed as a supplement to this petition. There was a petition for a rehearing, and the order denying the petition for a rehearing is dated June 17, 1957.

QUESTIONS.

The questions presented for review by this petition for certiorari, are:

(1) Whether gifts made by the petitioners during 1948 and 1949 to their Church by transmitting the gifts to the Elected Delegates Committee of the Ecclesiastical Society of Christ's Church of The Golden Rule with a written statement accompanying each transmittal:

> "Transmitted herewith is an outright gift of $..... to the Elected Delegates Committee of the Ecclesiastical Society of Christ's Church of The Golden Rule, to be used by them exclusively for religious purposes of the church.
>
> .....
>
> sign in ink—full name"

are deductible by the petitioners under Sec. 23(o) of the Internal Revenue Code of 1939, up to 15% of the donor's adjusted gross income.

(2) Whether a person making a gift to a Church is taxable at a greater sum because of the donor's religious beliefs:

(a) Whether a trustee of a religious trust must be an exempt organization under Sec. 101(6), or whether the terms of the trust alone determine whether a donor is entitled to a Sec. 23(o) religious gift deduction.

(b) Whether the religious gift deduction (Sec. 23(o)) depends upon whether the official or judge passing upon the question does or does not believe that the donor's religious organization uses effective means of spreading that religion.

(c) Whether the donor is entitled to compute her tax subject to a religious gift donation deduction, Sec. 23(o) depends upon the type of ecclesiastical organization exercising ecclesiastical control over those having the common religious beliefs.

(d) Whether a person is to be taxed more by denial of the religious gift deduction, Sec. 23(o) because the religious beliefs of the taxpayer are held by a spiritual organization:

(1) that turns a blind eye to the profit end, but nevertheless attempts to defer a part of the expenses of its religious training and ministry by related income, a by-product of the spiritual activities;

(2) believes that Christianity must not only be talked and written about, but applied to everyday life, and attempts by practical illustration and example to apply Christianity as a part of its ministry and religious training; and does not confine religion solely to verbalizing.

(3) exercises ecclesiastical control over a portion of the Church organization which may make some charge to the public or its members to defray its religious work.

(4) exercises ecclesiastical control over an organization which provides bare existence to those devoting full or substantially all their time to religious work, and to their dependents so that they can devote this time to the religious work, and thus some of the income "inures to the benefit of an individual" but does not pay them to do this religious work.

(3) Whether the petitioners are taxable for related income of their Church's religious activities because of membership or office or religious belief.

(4) Whether the petitioners as members of an Apostolic Religious Society having a common community treasury and which Society files its return as such under Sec. 101(18) and the members of the Apostolic Religious Society file their tax returns reporting the pro-rata share, whether received or not, as a dividend, are taxable upon more than their pro-rata share.

(5) 'How a member of an Apostolic Religious Society with a common community treasury, whose members and whose organization report the organization's income under Sec. 101(18) are taxable.

(6) Whether petitioner Riker is taxable for actual taxable income, or for the actual net income of the religious group of which she is an official, or for some $2969 additional sum included by mistake in the information attached to her return and not received by her or by the Church.

(7) Whether a person in an Apostolic Religious Association who donates substantially all her earnings to the religious work for exclusively religious purposes, is taxable both for the money earned without deduction for the Sec. 23(o) religious gift deduction and also for the distributive shares of both herself and her mother under Sec. 101(18) applicable to apostolic religious societies, and whether this member can or cannot claim as a personal exemption her aged and dependent mother (84-5 years old) because of her dependency.

STATUTES.

This petition for certiorari involves the construction and application of the following Statutes:

26 USCA 23, which reads:

"23. Deductions from gross income. In computing net income, there shall be allowed as deductions:

(o) Charitable and other contributions. In the case of an indivdual, contributions or gifts

payment of which is made within the taxable year to or for the use of:

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation to an amount which in the above cases combined does not exceed 15% of the taxpayer's adjusted gross income . . ."

26 USCA 101(6) which reads:

"The following organizations shall be exempt from taxation under this chapter—(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;"

26 USCA 101(18) which reads:

"101. The following organizations shall be exempt from taxation under this charter—

'(18) Religious or apostolic associations or corportions, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.' "

STATEMENT OF FACTS.

The petitioner Freda H. Grassmee was employed during the taxable years 1948 and 1949 receiving a salary from her employment (R. p. 140). She donated almost her entire wages to her Church, using Church form No. 399 in evidence (R. p. 140) stating in writing by this form that the money was to be used *exclusively for religious purposes* of her church. Notwithstanding the withholding tax, the Commissioner determined a deficiency against the taxpayer for $110.30 and a petition in this matter was filed with the United States Tax Court, seeking a redetermination, contending that up to 15% of the income was permitted as a religious gift deduction under Sec. 23(o).

Two months prior to the Tax Court trial, the Commissioner filed an amended answer setting forth that Grassmee on her return for these two years claimed

two personal exemptions, one for herself and the other for her aged and dependent mother. The Commissioner contended that because the mother lived with her in the Apostolic Religious group of the church the petitioner was not entitled to claim the exemption for her dependent mother. The mother was 84-5 years old (R. p. 141). During these years 1948-9 the mother lived with the taxpayer and moved with her from the church group in Los Angeles to the church group in San Francisco. Both the taxpayer and her dependent mother lived as part of the religious apostolic group and received the very small necessities used by them from the common community treasury. The Commissioner not only sought to tax Grassmee for her entire wages without deduction for any religious gifts she made her church, but also for her pro-rata share and her mother's pro-rata share, both of which included, with all the others in the society, all donations including Grassmee's donation of wages, and then urged that Grassmee was not entitled to deduct the personal exemption of the 85 year old dependent mother in the computation of the tax which included the mother's pro-rata share in the gross income.

The petitioner Riker, with her husband, had been in a partnership with his parents in a drugstore. The partnership was dissolved, and the taxpayer and her husband took a few of the drugstore fixtures and joined the San Bernardino group of this Church. The entire group worked together and set up the Church project using these fixtures and other property (R.

p. 144). During the taxable year involved, from Sept. 1947 to January 1948, all of the gross receipts from that group's religious activities in the Church project known as "Your Food Fountain" was turned over to the Elected Delegates Committee (R. p. 145). All of these gross receipts were accompanied with Church form No. 399 which stated the money was transmitted to be used by the Committee exclusively for the religious purposes of the Church.

Riker was the "project manager" of the church group (R. p. 145) which was a religious office with duties of instructing the others in their ecclesiastical work and studies (R. p. 145, Canon Law No. 22 R. p. 53). Materials and supplies of this activity were purchased from the Church project bank account, and the account was reimbursed through the Elected Delegates Committee (R. p. 147). All bills and receipts of expenditures were required to be submitted to the Committee and the account was reimbursed to that extent (R. p. 145).

Petitioner Riker lived with a group of the Church on a ranch a short distance from San Bernardino (R. p. 150), which was part of the Apostolic Religious Society (R. p. 155). The local group was supported by a revolving fund provided by the Elected Delegates Committee (R. p. 117). This student minister training project at San Bernardino was maintained by the Church for the purpose of making it possible for the student ministers to express and live in their daily lives, the teachings of the Church (R. p. 155).

The church has various members who live in their respective homes and hold meetings in their home. The church officers and those engaged in the church work as a part of their religion and to enable them to devote their time to their religious work, live in an apostolic religious society. This apostolic society is involved in these actions.

The church has its religious teachings and practices, (see Declaration of Faith, R. pp. 20-22, Tenet R. p. 30, Purpose R. p. 31-2, Duties R. p. 55) which includes the concept that the mere talking about Christ's teachings is not sufficient, but they should be seriously lived by men (R. p. 110-1), and the teachings of the church include that Christ's teachings should be lived and applied to every day activities; that giving does not impoverish nor does withholding enrich, and most of this world's ills are suffered from selfishness and greed and the desire to get something for one's self rather than give all one has to glorify the Creator. Giving with no thought of return brings back to the giver all that he needs. Those in the church study and practice this every day application of Christ's teachings regardless of the form of application. The ministry of the church is to bring these illustrations to the public so they can see how it actually works. The church has student minister training projects to let the public witness the daily application of Christ's teachings in whatever the groups happen to be doing (R. p. 110-3).

The fundamental concept of the church is the teaching that Christianity be lived and not be merely talked

about. Those engaged in the church's ministry apply Christianity to every day life and the church spreads its doctrines and teachings by having the public witness these applications. It uses the church facilities for this purpose. Those dedicating their lives and efforts to this Christian crusade study its teachings and apply Christianity not by mere words, but by actual doing.

Religion, by this concept, can be something that is applied to everyday occupation and activities. It can be something more than religious services one attends for an hour or two a week. It can be and is more than mere verbal communication, whether spoken, written or sung. By this concept, religion need not be confined to mere words. The concept includes the actual living and applying of Christianity. The church believes and teaches that when Christianity is applied, those who come in contact with these Church applications, will actually see it as something more than words, and a true way of doing things. It actually shows how religion can be practical, workable, and a usable concept applicable to every day life.

One learns by doing, and this is the laboratory application of the church's teachings by those studying this religion. Those who come in contact with the church activity see first-hand and directly what this religion is and how it works. It is one form of the church's ministry. Part of the cost of this ministry of the church is paid for by the related income, a by-

product of this ministry, and the balance is provided by donations for religious use of this church.

One form of the church's ministry is to bring to the world, by example, a way that the public may witness its actual operations. The church has a cross-section of projects for this purpose to promulgate and spread the teachings of the church (R. p. 113). Many of the church members live at home, and these congregations of this church are similar to the ordinary church. Some within the church take the church's teachings as their life work, and reside in the apostolic society and study and learn to live this way of life to be teachers and wayshowers as was Christ Jesus (R. p. 114).

The various groups of the apostolic society of the church live in student minister training projects (R. p. 114). These projects are selected by the Church primarily for the purpose of more widely disbursing and promulgating its teachings by having the public come in contact with the student ministers in their training (R. p. 116), and to train the students to spread these teachings to the public (R. p. 119). Some of these church activities are run at a financial operational loss (R. p. 120), and the sole consideration of the Church in maintaining and continuing a project, is whether or not it is serving the purpose of promulgating the church's teachings and its ministry (R. p. 120). The Church maintains ordinary theological studies and work in the ministry training. With this is the laboratory work, where the student ministers take their teaching and interpret and apply

this teaching to whatever walk of life or activity in which they may be asked to serve (R. p. 120-1).

The Elected Delegates Committee is a temporal agency of the Church for operating and handling the properties of the ecclesiastical gover nent. The ecclesiastical government designates the amount of money the temporal agency shall use for specified religious use. The ecclesiastical government, not the Committee, makes the determinations of religious and spiritual matters. The ecclesiastical government determines who are members and how much the Committee shall provide for support of any group, and the Committee is responsible to carry out these directions (R. p. 125; Canon Law No. 12, R. p. 41-4).

Where one Church project collects more money from the application of student minister activity and gifts, that group does not live better than another project (R. p. 126). The entire Apostolic Society has a single budget for living costs set by the ecclesiastical government (Canon Law No. 12 R. p. 41-4), and all are treated equally (R. p. 126). All of the funds allocated to the common community treasury held by the Committee, are paid by the Committee according to the budget set by the spiritual organization (R. p. 126). When there is a period of time that more donations and other funds come to the Committee, it does not mean a better standard of living for those in the Apostolic Society as that is not the purpose of the ministry (R. p. 127). When there is a deficit, the money to meet the budget for living comes from the sale of property the Church owns for its religious

purposes (R. p. 126). This may come from any of the several temporal agencies in this Church.

All of the gross receipts of the various groups, a by-product of the student minister training, and the church activities, go to the Church (R. p. 137), together with such donations and gifts as may be made by individuals.

Each Church project has two revolving funds. There is one revolving fund from which living expenses are paid, and the money is expended according to the budgets by the ecclesiastical government (R. p. 137). The other revolving fund is used to pay all expenses connected with the ministerial activity. All these groups have the same living standard, so that if one lived on a ranch such as that near San Bernardino, that raised its own food, this circumstance was taken into consideration in the budget of the living standard (R. p. 137).

During 1948 and 1949, the Committee of the Church filed its informational return, Form 990, as an exempt organization should (Exhibits 2 and 4 in evidence) and a Form 1065, income tax return as an Apostolic Religious Society, listing the names of each member (a total of 575 in the Apostolic Society in 1948 and 605 in 1949 (Exhibits 3 and 5). The individual members in the Apostolic Society during each of the years filed by family group their respective income tax returns listing the pro-rata share as a dividend (although not received) in strict conformity with Revenue Code Section 101, sub-division 18, applicable to

Apostolic Religious Societies. Examples appear in the record as the Riker returns, Exhibits 6 and 7, and the Grassmee returns, Exhibits 11 and 12. Each return shows the number in the taxpayer's family group, and for example, in 1948, 1/575 interest in the Elected Delegates Committee income of $217,001.54 amounted to $377.39 per person; $754.78 for 2 persons, etc. This amount was not received by the individual as a dividend but was reported under Section 101(18). The taxpayers stated in each return by a sheet attached, the amount contributed to the church, and since all contributions were included and reported as part of the Apostolic Society income, taxpayer would be taxed twice on the same amount by reporting it as wages and also as dividend, and for this reason only the dividend or pro-rata share of the Apostolic Society was reported for taxation purposes (R. p. 86-7 and Exhibits 6, 7, 11 and 12).

At the Church project in San Bernardino involved in the Riker appeals, persons lived on the ranch as part of the Apostolic Society (R. p. 146). These twelve to seventeen persons conducted the student minister training project of "Your Food Fountain" (R. p. 146). This church activity used in part the fixtures supplied by the taxpayer Riker, in part the property and funds provided by others and the services of the group of twelve to seventeen. The activity carried on its religious work, providing the laboratory for the student training and the ministry demonstrating to those in the community how Chris-

tianity actually worked when applied to every day life, in this particular place.

A former corporate temporal agency of this Church had fallen into the hands of a bankruptcy court (1945) and the trustees in bankruptcy proceeded to run the Church corporation and to collect the Church's gifts and the services of its members subsequent to the adjudication in bankruptcy. The District Judge had ordered the trustees in bankruptcy to cease operating the Church, and these trustees in bankruptcy claimed the property used by or owned by the members or any other entity of the Church (R. p. 128). Although the particular corporate entity was adjudicated a bankrupt in 1945, at which time it ceased to function as a church temporal agency, and the corporation subsequently ceased to exist; and although the trustees in bankruptcy of that former corporate temporal agency under California law could only act as agents to hold property in trust for the ecclesiastical organization prior to the adjudication in bankruptcy in 1945 and prior to the period involved in this case, this collecting of donations subsequent to the adjudication gave rise to the claims appearing in Exhibits 9 and 10 in this appeal. It appears from Exhibit 10 in evidence that the Elected Delegates Committee was represented by Judge John W. Preston, together with the "Loyal Affiliates" those who retained their religious beliefs of their Church. This is to be distinguished from the "Dissenters", a small percentage of those who claimed to have a preferred right in bankruptcy by reason of having

renounced their religious beliefs, and were represented by other counsel. It is a basic principle of bankruptcy law that any property acquired after adjudication particularly by gift, is no part of the bankruptcy estate. Only property owned by the bankrupt at the time of adjudication passes to the trustees in bankruptcy. Notwithstanding this elementary principle of bankruptcy law, the trustees in bankruptcy claimed all property acquired by the spiritual body, even that acquired by the Elected Delegates Committee, who undertook to act for those holding the common religious beliefs, after the adjudication in bankruptcy of the former Church corporation. The trustees in bankruptcy even contended that property owned by the individual Church members or acquired by Church members subsequent to the bankruptcy was property of the trustees in bankruptcy, solely because of the individual's religious beliefs.

After that adjudication in bankruptcy, and prior to the periods involved in these tax matters, the bankruptcy trustees instituted a summary proceedings as shown by Exhibit 9 against Mrs. Riker because she was the spiritual leader of the particular group. This was a claim by the trustees in bankruptcy not only to the few fixtures furnished by Mrs. Riker, but to all of that Church project and its related income that was a by-product of this ministry of this group. These trustees in bankruptcy contended that all gifts intended for the spiritual body and the Elected Delegates Committee that acted for the "Loyal Affiliates" subsequent to the adjudication in bankruptcy, be-

longed to the trustees in bankruptcy of the former temporal agency of the church upon the theory that there was either a promise to give which should be specifically performed and therefore anything produced or acquired by any persons having retained their religious beliefs of the group after the bankruptcy was property of the bankrupt estate of this former corporate temporal agency. These bankruptcy trustees claimed any gift made to the ecclesiastical organization or its new temporal agency, the Elected Delegates Committee, belonged to these trustees in bankruptcy even though the gift was made after the adjudication in bankruptcy. In asserting these claims, the trustees in bankruptcy made a claim to "Your Food Fountain" and commenced the summary proceedings joining Mrs. Riker who was the spiritual leader of the group at San Bernardino. To avoid closing this religious activity under the powers of the bankruptcy Court before the matter could be heard and finally determined, the trustees in bankruptcy for their own reason, required the interim operation agreement as set forth in Exhibit 9 with Mrs. Riker alone. The compromise was made with Mrs. Riker and the Committee, and the "Dissenters" and the trustees in bankruptcy, (Exhibit 10) by which the Committee gave a note of $1,500 and subsequently paid this amount. The mechanics of the compromise provided for a sale to the Committee of whatever interest the trustees in bankruptcy claimed to hold.

At the time of the interim agreement (May 1947), the corporate temporal agency had ceased functioning (at the adjudication in 1945). The trustees in bankruptcy at the time of the interim agreement, had been ordered to and had stopped conducting the ecclesiastical society's temporal affairs and had stopped collecting the donations intended for that religious society and proceedings were pending claiming this Church activity and the gifts to the religious society (impounded related income to September 1946, see Petition, Exhibit 10). This occurred prior to the taxable years 1948 and 1949 involved in this appeal.

The evidence in the record is that a group of twelve to seventeen persons, including the Rikers, all in the Church's Apostolic Religious group living at San Bernardino, established this Church activity (R. pp. 16, 144). The creation of a student minister training project was the result of the efforts of the entire group and the expenses, therefore, were paid by the Church through the Elected Delegates Committee. The Church project known as "Your Food Fountain" was not a temporal agency of the Church. It was not until January 1948 that the Church Constitution and Canon Laws were adopted, and therefore as a Church project it could not be issued a charter as provided by the subsequent Church Constitution. The revolving funds, of which there were two (R. p. 118), were money provided by the Elected Delegates Committee and were a means of accounting and financial control. The project account was reimbursed for actual expenses of the conduct of this religious ac-

tivity according to expenditures submitted (R. p. 118). The group's living expenses were maintained in a separate revolving fund from which the expenditures were made for living of the group according to a budget for living expenses determined by the ecclesiastical church government (R. p. 118) and the living expenses were paid by the Committee.

The testimony is without conflict that during the period involved from the start of the fiscal year in September 1947 to January 1948, "Your Food Fountain" was a Church project in which all of the gross receipts were transmitted to the Elected Delegates Committee with the written statement that it was for religious purposes of the Church. It was a Church activity to provide for the training of the ministers to apply their religious study to every day life and to carry the Church ministry to the public. It was created by and conducted by a group of twelve to seventeen student ministers in the Apostolic Religious Society who received no pay from Mrs. Riker and whose entire living expenses were paid by the Elected Delegates Committee and included within the $202,000 sum shown in the Committee's informational return for the fiscal year 1947-1948, as cost of student minister maintenance. A substantial part of these gross receipts of the group were the product of the services of the twelve to seventeen persons of which the taxpayer Riker was but one. These gross receipts, a by-product of the student minister training and of this ministry of the Church, were both the product of the physical and intangible assets, which were

owned by the Church Committee as a temporal agency and of this group of twelve to seventeen persons working in this Church activity. Only a part of these by-products of their services and their *religious training* and ministry represented the services of Mrs. Riker. It was not the twelfth part. The fact that Mrs. Riker held the particular licenses required by law, or that she was a spiritual instructor of this group or that she was singled out by the trustees in bankruptcy to be a party to a summary proceedings on a claim made against the Church group and the trustees in bankruptcy, required her to make the interim agreement as a condition of continuing her group's religious activity until the proceedings could be heard, does not make her taxable for these by-products of the Church's student minister training project, which by-product helped defray in part the cost of this religious training and ministry. It does not make Mrs. Riker owner of the Church property created by the efforts of some twelve to seventeen persons in the Church work, and created with funds provided by the Church Committee for the religious uses. The fact she and her husband contributed certain drugstore fixtures does not make her owner of the other Church property. She was the spiritual head of a small group of the larger Apostolic Society. The expenses connected with the living of some twelve to seventeen persons engaged in this activity were paid by the Committee according to the budgets set by the spiritual organization. No part of their cost of living is included within or is a part of the sums which were the reported ex-

penses of operation of this activity. All expenses of this ministry creating this related income were paid by the Church Committee. In view of the past claims by the trustees in bankruptcy, it is not hard to understand why the group chose to use a written form transmitting the gross receipts of their related income of their ministry to the Church, to be used solely for their Church's religious uses. That their spiritual leader signed such a gift form is clearly explained in view of the prior year's events, and the pending claims to the particular church property. It does not make this related gross income of the twelve to seventeen engaged in the ministry of the Church, the personal income of the spiritual leader, Mrs. Riker. It is clearly the related income of the Church that received it. The personal property was that of the Church, not Mrs. Riker, as leader of that flock. The transactions shown in Exhibits 9 and 10 show that Mrs. Riker recognized this entire property as Church property, and that it was owned by the Church and the Church Committee. It was the Church and the Church Committee that sold this property. It was the Church and the Church Committee that received the sales price of this property.

Although the particular San Bernardino Church project returned a substantial sum of money over and above actual costs of operation, and but for the cost of supporting the twelve to seventeen persons engaged in this work (see Ex. 6), would by economic business standards, be considered a financially profitable operation, the Church officials determined in Jan-

uary 1948 that this particular activity known as "Your Food Fountain" was not carrying out the spiritual ends of the Church as the spiritual organization desired, and in accordance with the policy of the Church discontinued the activity in January 1948.

The Church Committee undertook to sell the property it owned in this former project, and because of the pending claims and litigation (R. pp. 151-2, 159) was not able to do so at once. Mrs. Riker operated the Fountain, changing partners from time to time while the Committee tried to sell the property as a business (R. p. 129) and for the most part her partners were relatives (R. p. 149), until the final partnership was with an intended purchaser (R. p. 151). During the partnerships it was run as a private business (R. p. 150) but Mrs. Riker gave all her partnership income to the Church.

It should be noted Mrs. Riker's taxable year ran from September 1947 to September 1948 and she showed in her return all the gross receipts of the Church project collected in full by the Committee and the actual expenses paid by the Committee without including the student ministers maintenance of the group of twelve to seventeen whose services were a substantial part of this total gross receipts received in full by the Committee. She showed her total partnership share which she gave to the Church and which in part compensated the Church for the use and exhaustion of this property. She reported the pro-rata share of the Apostolic Society for that period both for herself and her young daughters who lived with

her, (which pro-rata share was not received and included the income of this group and her partnership income but did not deduct living expenses designated "Student Ministers Maintenance").

From January 1948 on until the Committee sold the property formerly used as the Church project, Riker's partnership returns show very small gross receipts and the returns show no charges nor deductions made for the Committee's property use nor exhaustion. Riker gave all she obtained from these partnerships to the Church for religious purposes, and there was no intention to segregate what part was the result of the efforts as a partner and the part that was the use and exhaustion of the property.

Riker's returns showed an error whereby $969.26 was by mistake over-reported as gross receipts while the Church project was operated during late 1947 (R. p. 155-8). The net income of the partnership failed to deduct $2000 paid for materials and supplies. The Commissioner did not purport to make any audit or determination but assessed Riker solely upon the basis of the information attached to her return. It should be noted that not only is Riker taxed for more than actually involved, but she is not taxed upon the gross receipts remitted to the Committee by the Church group, nor is she taxed the actual difference between the gross receipts and expenses of the Committee expended during these several months, but she is taxed some $1400, plus interest, without deduction for the costs of the Committee for the support of the

12 to 17 persons whose services created most of the money for which Riker is taxed.

CHURCH ORGANIZATION.

Christ's Church of the Golden Rule was organized along the conventional lines. It had an organic law which is called a Church Constitution and Canon Laws (Exhibit 1 in evidence, appearing in the record, pages 20 to 67). Ecclesiastical matters are vested in the ecclesiastical head, the Senior Elder, and the Board of Elders, a legislative body, and the College of Pastors. Final ultimate control vested in the Convention and vote of the membership that had full power to remove any official and make any final act. It could be called by either the Senior Elder or by 25% of the Church members and convention members are elected by the membership.

Property and income of the Church are held by Temporal Agencies solely for religious purposes. The guarantees and safeguards that this property, money and income could and would be used solely for these purposes are clear, numerous and effective.

(1) All officers and members of such an agency must be ecclesiastical members subject to the discipline of the Church (Const. VI, R. p. 26), that is, members entitled to positions of trust and confidence be reason of their religious beliefs alone (Canon Law 13 (8), R. p. 48-49).

(2) All temporal agencies must hold a charter from the Church government (Const. Art. VI, R. p. 26-27), one of the conditions of which is that it is subject to the Church laws (Canon Law 4 & 5, R. p. 34-35). Any transaction involving $10,000 or more must be approved by the Senior Elder whose determination is whether the transaction is calculated to reduce or lose property subject to religious uses *and* whether the transaction will carry out the religious purposes (Canon Law 6, pp. 35-36). If any temporal agency does or suffers to be done anything that materially impairs the ability of the temporal agency to act for the Church or impairs its property for religious purposes, then (1) the Senior Elder, or (2) the Advisory Board, or (3) the Church judiciary on its own motion can suspend the powers of the Temporal Agency, thereupon the Church Judiciary shall designate a Temporal Agency to take possession of its property and upon notice the Church Judiciary shall have a hearing and decide the merits and who shall take the property as successor under the religious trust (Canon Law 7, R. p. 36-37). If the Senior Elder determines any charter is violated or Canon Law violated, he can suspend the charter, or the Church judiciary has this power (Constitution Art. VI (4), R. p. 26). If either the Senior Elder or Advisory Board find any property of a chartered agency of the Church is not being used according to the religious dedication, the property can be transferred to another temporal agency as in the Canon Laws provided (Const. Art. VI (5) R. p. 27). The Church ju-

diciary has final determination in such matters (Const. Art. VI (6) R. p. 27).

(3) All property of the Church is held under an express trust for the benefit of the ecclesiastical organization (Const. Art. VI (7) R. p. 27-28 and Canon Law #3, R. p. 33) and the ecclesiastical matters are all important (R. p. 33).

(4) All property acquired by the Church or any of its activities or groups must be used exclusively for the religious purposes (R. p. 37-38), and all gifts and transfers are bona fide gifts to the Lord's work, unless there are conditions or understandings in writing approved by the ecclesiastical government. The Canon Law 8 (R. p. 37-38) specifically defines this consent shall be given only if the condition or understanding or promise will tend to carry out the religious purposes and such written condition or understanding or promise is necessary to carry out those religious purposes. Consent shall be withheld if such condition, understanding or promise in the discretion of the ecclesiastical head is likely to impair the religious purposes or subject other property subject to the religious purposes to undue risk or hazard. This Canon Law states the policy of encouraging gifts of real property to be subject to the condition that it be used solely for religious purposes.

(5) Gifts having a condition to maintain or support the donor or for support of any individual are prohibited (Canon Law 9, R. p. 39).

(6) Canon Law 10 (R. p. 39-40), specifically provides no money, income or property shall accrue

to the personal profit or benefit of any person, persons or shareholders but all income of any group, project or temporal agency shall always be used for religious purposes and no amendment of the Canon Laws and no instrument under which any gift or conveyance is made shall permit any person to have any proprietary rights in any income. No Temporal Agency shall ever issue any stock or certificate for payment of any income to accrue to the benefit of any individual or stockholder.

(7) Canon Law 11 (R. p. 40-41), prohibits the use of any property to influence legislation or for propaganda. It prohibits any gift, conveyance or acquisition under which property may be used for such prohibited purposes.

(8) The personal profit from the Lord's purse is specifically prohibited as is any profit to any person to commercialization from property subject to religious trust (Canon Law 12, R. p. 41-43). No salaries, wages or compensation can be paid to any person for work, studies or effort in carrying out the religious purposes and all such services are bona fide gifts unless the person subject to the Canon Laws, (that is members and officers), has an express contract in writing with the person, group or organization defining the compensation and the writing is duly approved by the ecclesiastical government who shall not approve such a writing unless it is determined the compensated services are within the religious purposes and necessary to carry out those purposes (Canon Law 19, R. p. 51-52). Even expenses of travel,

etc. cannot be paid without a Church official determining the sum is necessary and it will carry out the religious purposes (Canon Law 12 (1), R. p. 41).

(9) To meet the material needs of those persons, their families, and dependents who dedicate their work, services and studies to carry out the religious purposes, the Apostolic Society form of living is selected as the means to accomplish these results within the doctrines of the Church (Canon Law 12, R. p. 41-42).

The apostolic form is that used by the early Church and is described in The Book of Acts.[1] The various members and their families live in groups and the Church provides such of their necessities as it sees fit. Those in the group donate so much as they wish to the Church (lay it at the feet of the Apostles). The Church has a common community Treasury for these needs. Peter, the Apostle, stated to Ananias and Sapphira that they were not required to give anything, but having sold some property it was wrong to give part and lie about the sum received from the sale.[2]

(a) Canon Law 12 (2) provides for the common community Treasury. The Church government had

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[1]Acts 2:44-7; Acts 4:32-7.

In the New Testament published by St. Anthony Guild Press, Paterson, N. J. at page 325 appears a footnote to Acts 2:44 wherein it is stated the early Christians held the property in common. "In common. All were ready to help the needy, and as occasion demanded, they sold their possessions to do so; this spirit of fraternal charity is widely different from modern Communism."

[2]Acts 5:1-11.

designated the Elected Delegates Committee as the temporal agency to handle this common community Treasury (R. p. 103).

(b) The ecclesiastical government designates how much is necessary (Canon Law 12 (4), [R. p. 42] and R. p. 117, 118, 125, 126) for the common community Treasury to carry out the religious purposes through the Apostolic Society form of living. Thereupon the various temporal agencies are authorized to make available money or property as a religious purpose up to the amount so determined.

(3) From among the facilities owned or controlled by the various temporal agencies, the ecclesiastical organization specifies those to be used for living accommodations and the temporal agency is authorized to use such property as a religious purpose as directed (Canon Law 12 (5), R. p. 42-43).

(d) Only the ecclesiastical organization can determine the amounts for benevolences.

(e) Only the ecclesiastical organization can designate who, including those not Church members, can be fed, lodged or supported by the temporal agency as a charitable or helpful act in illustrating the teachings and purposes of the Church.

(10) Canon Law 17 (R. p. 50), provides there shall be no legal obligation for giving or paying money as a condition of office, or membership. Canon Law 18 provides there shall be no financial liability or property rights accrued by reason of Church membership or office.

(11) Canon Law 20 (R. p. 52), specifically states no person has any right, title or interest to any Church property by reason of membership or office. It states all property shall be used exclusively for religious purposes of the Church.

(12) It is made a specific offense triable before the Church judiciary for any person subject to the Church disciple to attempt to divert property of any temporal agency from its religious uses or misuse such property, contrary to the doctrines of the Church.

(13) The Church judiciary is given full and final jurisdiction in all Church matters, including property. Any person in the Church may invoke its jurisdiction. Only in disciplinary proceedings may its judgment be changed by the Senior Elder, to reduce the punishment or grant clemency (Canon Laws 30 to 37, R. p. 58-67).

The Tax Court stated in its decision (R. p. 95):

> "The Church has no church buildings. Its principal reliance is on having its members live in a manner exemplifying Christ's teachings, particularly by living in a selfless manner. Its student minister training projects, while engaging in commercial activities, were designed to permit the public to witness the application of Christ's teachings to everyday life. Thus the very means chosen by the Church to attain its spiritual purposes involve engaging in commercial activities through its principal temporal agency, the Committee . . . "

The Church tax returns, Exhibits 2 through 6 in evidence, show that the amounts spent for support of those in the Apostolic Religious Society was very nominal:

Expended per person per month (amount in return divided by number of persons)

	1947-8	1948-9
Food and Household	$19.50	$10.80
Medical	2.23	2.03
Clothing	2.02	2.56

In the 1948-9 Committee's returns the total spent on 602 persons for food and household, medical, clothing, eyeglasses, dental, utilities and housing, recreation, etc. by the Committee was $129,757.44, which is $17.95 per person per month.

Each member of the apostolic society (as did Riker and Grassmee) reported for this period under Sec. 101(18) $316.17 as a "dividend" though not received. Each of the petitioners had two in her family unit and thus each reported $632.34 as the "dividend" under Sec. 101(18) for taxable income, but stated it was not received.

ARGUMENT.

I.

GIFTS MADE TO A CHURCH WITH A WRITTEN STATEMENT THAT THE MONEY IS TO BE USED EXCLUSIVELY FOR RELIGIOUS PURPOSES OF THE CHURCH SHOULD BE DEDUCTIBLE UNDER SEC. 23(o).

A.

Congress by statute, 26 USCA 23, has defined the deductions from gross income in computing the taxable income, and provided that gifts for religious purposes are deductible, not to exceed 15% of the adjusted gross income.

It is the policy of the law to encourage support of religious, charitable, scientific, literary, and educational organizations by private donations. Not only are these organizations encouraged and developed to the end that the general benefit of individual efforts along these lines accrue to the public but also the encouragement of the individual taxpayer to take part in worthy causes.

The Courts have construed these provisions of the law liberally. A taxpayer having in good faith made a donation to a religious organization or for the use of such an organization is not to have his or her deduction subsequently denied and suffer a deficiency assessment for mere technical reasons or because the taxing authorities take a restricted view of a particular religion or religious practices of the beneficiary of the donor's bounty.

In actual practice, the taxing authorities disallowance of this deduction has a severe crippling and de-

structive effect on any religion. This power of the taxing authority can be the basis of discrimination within the First Amendment of the United States Constitution, for private contributions and donations are the life blood of any religion's activities, its power to expand or even survive. Few but the most devout will continue to support a Church knowing there is certain to be income tax audits, income tax trouble and deficiency assessments if they so much as give financial support to the religion of their choice. Nothing is calculated to discourage financial support of one's own religion than a knowledge that the mere giving and contribution is certain to entail a careful audit of one's return, conferences with the taxing agencies and certainty of a deficiency assessment. How much stronger this effect is as a discrimination and detriment, to the particular religious cause at bar where the concept of Christianity involves the living of a selfless life like Christ, and the donor and contributor such as Grassmee and Riker who gave all their money as they received it to their Church. The very concept of the apostolic religious form of living which is recognized by Congress and regulations of the Commissioner of Internal Revenue, are struck a deadly blow when those living in this recognized form of religious activity are singled out for assessments, disallowing their gifts to their Church, which gifts are included in the income of the group and the pro rata share thereof reported and taxed as income to each member of the group. The contributors and donors are ascertained from their Church's records and returns and penalized by income tax assessments

for their religious beliefs and zeal in advancing their religious crusade.

The policy of the law is contrary to this strict view and the Constitutional right of religious freedom abridged, infringed and made the subject of administrative action and personal liability.

B.

This provision by statute excepting gifts and donations is begotten from motions of public policy and is not to be narrowly construed.

Helvering v. Bliss, 293 U.S. 144, 55 S.Ct. 17, 79 L. Ed. 246;

Harrison v. Barker Annuity Fund, (CCA-7) 90 F.2d 286;

Cochran v. Comm'r, (CCA-4) 78 F.2d 176;

Roche's Beach Inc. v. Comm'r, (CCA-2) 96 F. 2d 776.

This section is to be liberally construed, it being remedial in character.

Seasongood v. Comm'r, (CCA-6) 227 F.2d 907.

A gift to an irrevocable trust which includes charitable purposes for beneficiaries, kin of the donor (preference directed to worthy descendents of the donor's father), is a deductible gift.

Schoellkopf v. U.S., (CCA-2) 124 F.2d 982.

A gift to the donor's grand Army Post is deductible. The character of the donee corporation is to be determined by its articles which was a non-

profit corporation intended for relief of its members, etc.

Duffy v. Pitney, (CCA-3) 2 F.2d 230.

Voluntary gifts to an unincorporated association whose purposes were to pay pensions to Gimbel Bros. employees, pay for life insurance of their employees, extend relief to those employees, and provide certain scholarships, are deductible gifts. It does not defeat the exemption because the charity is restricted to a class.

Gimbel v. Comm'r, (CCA-3) 54 F.2d 780.

A gift to an association is none the less deductible because it is for awards to citizens. The motive of the gift is the test and it is still charitable though it extends to both rich and poor.

Bok v. McCaughn, (CCA-3) 42 F.2d 616.

A gift to World League Against Alcoholism is deductible as an educational purpose though it advocates, collects and disseminates information about prohibition and use of alcohol. The Court points out a university may have a professor who advocates controversial matters and a library can contain books of a controversial nature, but neither are less educational thereby.

Cochran v. Comm'r, (CCA-4) 78 F.2d 176.

A gift to an unincorporated association of members of the donor's family and the association made gifts

to indigent individuals who were old family retainers ($2257 given in year to 9 individuals) is deductible.

Havemeyer v. Comm'r, (CCA-2) 98 F.2d 706.

A gift is deductible under Section 23 (o) when made to a fund organized and controlled by a non-exempt organization, where the purpose of the fund is within the section. This section is based on public policy to encourage donors for the listed purposes.

Faulkner v. Comm'r, (CCA-1) 112 F.2d 987.

A gift is deductible when made to the League for Industrial Democracy which does research, arranges lectures, debates and discussions and promotes pamphlets and books concerning economic and social problems. The fact the donee organization may be like or unlike a political party does not remove it from its educational work and education is the imparting and acquisition of knowledge, mental and moral training not restricted to the narrow concept of instruction.

Weyl v. Comm'r, (CCA-2) 48 F.2d 811.

The fact that the donor receives an incidental benefit from a trust to which the gift for civic and charitable purposes was made does not defeat the exemption.

Johnson v. U.S., (DC-Tex.) 8 Fed. Supp. 842.

A gift is deductible under Section 23 (o) when made to I AM reading room for religious, educa-

tional and charitable purposes of that religious movement.

Potter v. U.S., (DC-Ill.) 79 Fed. Supp. 297.

A gift to Hamilton County Good Government League is deductible under Section 23 (o) though the donor was a principal backer and officer in it, the organization sponsored political candidates, sponsored and opposed various legislation. The Court pointed out only 5% of the time and effort went to propaganda which it defined as enlightening people in matters of politics and the substantial activities were within that section. The Court in determining the gift deductible held that section was to be liberally construed and was remedial in character.

Seasongood v. Comm'r, (CCA-6) 227 F.2d 907.

The facts in the Riker and Grassmee cases, indicate a strong factual situation justifying the public policy and remedial character of the section. One making a gift to one's own church for religious purposes should have the same liberal rules applied as indicated by the above decisions which are but a few of the many holdings in the various reported decisions.

C.

It should be pointed out that a gift to a non-exempt organization has been held deductible where the gift is "for the use of" the purposes under Section 23 (o).

In *John Danz*, 18 T.C. 454 (1952), Section 23 (o) uses the language "to *or* for the use of." It shows

that gifts for religious, charitable, scientific, literary or educational purposes are intended by Congress to be deductible from gross income in computing taxable income. In the case at bar *all* donations (R. p. 109) were made and accompanied by a written instrument (Exhibit 8) that stated the gift was to be used solely for religious purposes (finding, R. p. 83) of the Church. The first paragraph of Exhibit 8, Church Form 399 reads:

> "Transmitted herewith is an outright gift of:
> .....($.....)
> Amount of item
> to the Elected Delegates Committee of The Ecclesiastical Society of Christ's Church of The Golden Rule, to be used by them exclusively for religious purposes of the Church.
> .....
> .....
> Sign in Ink—Name in Full"

Such language, per se, in a written document would and does create a gift in trust for the religious purposes. If made to any person, clearly not an exempt organization as for example a trust company, private person or a group of individuals it would be a gift in trust, enforceable in a competent Court, and recognized as a valid and deductible gift for religious purposes within Section 23 (o). The facts are doubly strong when the gift goes to a committee of the Church, chartered under its Church Constitution and Canon Laws (finding, R. p. 82) that provides the

money and property be held upon a trust for religious purposes (Canon Law No. 20, R. p. 52) and the spiritual body (Ch. Const. VI (7) R. p. 27-8) (Canon Law No. 3, page 33; No. 8, pages 37-8) and that contains the numerous safeguards and remedies (R. p. 20-67) heretofore detailed in this petition.

This question of deduction of gifts accompanied by this written statement, to this Church with these Canon laws, is of vital importance to numerous members of this Church whose cases are pending in the Agent's office. This is a test case to determine the points of law. (See affidavit to amend petition, R. p. 74-6.)

D.

The Ninth Circuit decision in this case turns in part its holding that Sec. 23 (o) is not applicable as the Court holds both the spiritual body's church government taxable and the Church Committee taxable and not exempt organizations within Sec. 101(6).

Although Sec. 23 (o) contains similar language to that contained in Sec. 101(6) defining exempt organizations, both sections have heretofore been construed by different rules and subjected to different tests. Let us see how the Courts have heretofore construed the law on exempt organizations.

1.

One test sometimes applied to organizations to determine whether or not they are exempt within Section 101 are the instruments that create them, that

is their charter and organizational laws. Any act outside of those would be *ultra vires* and the purposes and powers prescribe the authority and sphere of action.

Harrison v. Barker Annuity Fund, (CCA-7) 90 F.2d 286;

U.S. v. Proprietors of Social Law Library, (CCA-1) 102 F.2d 481.

2.

Most of the circuits have applied the "ultimate destination" rule in determining whether a commercial enterprise is exempt under Section 101 (6). Stated another way, whether its purpose is to devote its profits to religious, charitable or educational purposes is the test of whether the organization is exempt or not.

Roche's Beach Inc. v. Comm'r, (CCA-2) 96 F. 2d 776;

Koon Kreek Klub v. Thomas, (CCA-5) 108 F. 2d 616;

Debs Memorial Radio Fund v. Comm'r, (CCA-2) 148 F.2d 948;

U. S. v. Pickwick Elec. Membership Corp., (CCA-6) 158 F.2d 272;

Bohemian Gymnastic Assoc. v. Higgins, (CCA-2) 147 F.2d 774;

Willingham v. Home Oil Mill, (CCA-5) 181 F. 2d 9;

Scofield v. Rio Farms, Inc., (CCA-5) 205 F.2d 68;

Crooks v. Kansas City Hay Dealers Assoc., (CCA-8) 37 F.2d 83;
Mueller Co. v. Comm'r, (CCA-3) 190 F.2d 120.

There are cases to the contrary involving hard facts as where only a small part of the earnings actually goes to the exempt purposes as *U.S. v. Community Services,* (CCA-4) 189 F.2d 421 where a business corporation was formed to operate a canteen for a specific mill, and although the articles of incorporation provide for all the profits to be used for religious, charitable and scientific purposes, the record shows that only a small part of the receipts were earnings and only a portion of the earnings were used for the exempt purposes and the balance used by the corporation or set aside as a reserve. This *Community Service* case was disapproved by the Court of Claims in *Sico Co. v. U.S.,* 102 Fed. Supp. 197 on the authority of *Mueller v. Comm'r,* (CAA-3) 190 F.2d 120, and the *Mueller* case is directly contrary.

In *Scofield v. Rio Farms, Inc.,* 205 F.2d 68, the 5th Circuit in passing on a capital stock tax imposed on a corporation created to meet social problems and assist farmers within a certain tract to improve and benefit their situation, which farmers were not the recipients of charity, held the liberal construction is to be accepted in favor of the exemption, and held the use of the profits and not the source determines the exemption. The 5th Circuit held that the weight of the authority is with this rule and cited *Koon Kreek Klub v. Thomas,* 108 F.2d 616 and *Willingham*

v. Home Oil Mill, 181 F.2d 9 that liberal construction be applied in favor of the exemption.

It appears from language in *Retail Credit Association of Alameda Co. v. Comm'r,* (CCA-9) 90 F.2d 47, citing *Crooks v. Kansas City Hay Dealers Association,* (CCA-8) 37 F.2d 83 and *Trinidad v. Sagrada Orden,* 263 U.S. 578, 44 S.Ct. 204, 68 L. Ed. 458 and from the language in *Smyth v. California State Automobile Association,* (CCA-9) 175 F.2d 752, that it is the purpose to which the income is devoted which determines whether or not the exemption exists, citing *Koon Kreek Klub v. Thomas,* (CCA-5) 108 F.2d 616 and *Trinidad v. Sagrada Orden,* 263 U.S. 578 that this circuit might favorably consider this rule as the law of this circuit.

3.

In *Squires v. Student Book Corp.,* (CCA-9) 191 F. 2d 1018 this circuit stated it was an open question as to whether the "ultimate destination" rule were to be followed and indicated that in the *Smyth* case (175 F.2d 752), the ultimate destination rule was cited with approval, that the law as to exempt organizations was changed in 1950, effective in 1951, and that a book store run by a commercial corporation whose stock was owned by Washington State College regents under a trust for the benefit of the Associated Students was exempt. The Court held "The business enterprise in which the taxpayer is engaged bears a close and intimate relationship to the College itself" as the test of the exemption. In this case the corporation

sold books to the faculty and students and ran a kitchen and restaurant for the students. The income was used for the construction of the Student Union and the acts of the Associated Students was subject to the approval of the College President.

Some decisions apply the test that there must be a primary purpose for which the organization is founded within the exempt purposes such as religious, charitable or educational. These decisions recognize that money is essential to the conducting of any such purpose. If the organization to obtain the means of carrying on its purpose engages in some commercial enterprise, though not necessarily connected therewith or related thereto, the organization is still exempt under Section 101.

The 9th Circuit in *Retail Credit Association of Alameda County v. Comm'r,* 90 F.2d 47, adopted this rule of primary purpose and held that where an ordinary business for profit is purely incidental to the main or principal purpose as in *Crooks v. Kansas City Hay Dealers' Association,* (CCA-8) 37 F.2d 83, and *Trinidad v. Sagrada Orden,* 263 U.S. 578, the organization is exempt. The Court held that in determining whether a purpose to engage in a regular business of a kind ordinarily conducted for profit is merely incidental or subordinate, each case must stand on its own facts. In that case the Court held that although there was no exemption and the organization acted as a collection agency and credit reporting bureau for fees and charges and was conducting a business not incidental to a main or principal purpose, there was nothing in

the statute or regulations prohibiting any exempt organization from engaging in any form of business. The purpose was the test.

Crooks v. Kansas City Hay Dealers' Association, (CCA-8), 37 F.2d 83, held that charging of fees to inspect and weigh hay by the voluntary association of the market dealers was incidental to the main purpose to give integrity to the hay market. The Court held that the fact that an organization receives some income to carry on its work is no proof it was organized for the sake of profit. The test was the main purpose and the ultimate destination of the profits and property acquired.

Koon Kreek Klub v. Thomas, (CCA-5) 108 F.2d 616, in holding a fishing and hunting club owning 6,777 acres and who let land for livestock (its articles authorized it to raise livestock for profit) and used the income for organizational purposes was held an exempt organization. The decision pointed out that the financial gain was incidental to and directed toward the accomplishment of its purposes; that the statute says nothing of the source of the income, but ultimate destination is the test. The decision recognizes the necessity of an organization having money to carry on its exempt purposes and observes that deriving funds for this purpose is no departure.

Willingham v. Home Oil Mill, (CCA-5) 181 F.2d 9, involved a business corporation whose stock was bequeathed to a trust and whose articles were amended to require its purpose to be religious, charitable and

educational and no net income of which could inure to the benefit of any individual. The decision quotes Marshall in the Dartmouth College Case that if a civil institution were employed in the administration of government it would be a public corporation and draws the analogy to where a private corporation be employed in administering for religious, charitable and educational purposes. The Court held the sole purpose was to devote the net income to the exempt purposes and it was an exempt organization.

Bohemian Gymnastic Association v. Higgins, (CCA-2) 147 F.2d 774 involved the conduct of a bowling alley, kitchen, bar and restaurant as an incident to the main purpose of a gymnasium for educational purposes. The Court in holding the organization exempt, followed the ultimate destination rule and held these fund raising businesses incidental to the main educational purpose. The Court held that the exemption was not to be denied a religious or charitable organization which raises its money through some business not its principal object. Dues are not a test, either.

U. S. v. Pickwick Elec. Membership Corp. (CCA-6) 158 F.2d 272 involved a corporation organized to distribute T.V.A. power. The Court held it was organized and operated for purposes under two Subdivisions of Section 101, and these sections are cumulative and not mutually exclusive. The Court held its principal purposes not a commercial one, and although it served both members and non-members making a charge to them which resulted in a profit, it only provided a prudent margin of safety and over a period of time

operated on a non-profit basis. Here again the test was ultimate destination coupled with its principal purposes being exempt purposes. The Court recognized the need for money to effect the exempt purpose, even to retaining a safe margin to be able to carry these purposes out over a long period of time.

Debs Memorial Radio Fund v. Comm'r, (CCA-2), 148 F.2d 948, involved a radio station that made charges to the public for radio time and used its money for educational purposes for which it was exempt. The Court followed the ultimate destination rule. The facts indicate a business related to its principal purpose, the need for funds to effect that purpose and its principal purpose was educational and the revenue was only incidental.

Comm'r v. Orton, (CCA-6) 173 Fed. 2d 483 held a foundation an exempt organization. This foundation was created by will of Orton, an engineer and on Ohio State University faculty, to manufacture and sell for a profit cones for testing heat in ceramic manufacture and use the net profit of 20% of sale prices to do further research in the ceramic industry. The Court held that this was a foundation to promote science or art and the manufacturing business was not run in a vacuum but was related to the objective of good ceramic manufacture and the profit for research; and distinguished ordinary business enterprises that were run solely for personal financial gain.

4.

The leading case on religious exempt organizations is that of *Trinidad v. Sagrada Orden,* 263 U.S. 578, 44 S.Ct. 204, 68 L. Ed. 458 in which the corporation sole of the established Church in the Philippines held large properties from which it collected rents, owned stock in private corporations, loaned money at interest and received small sums from alms and sale of supplies as chocolate, wine, etc. connected with its religious work. All of the income was devoted to the religious work of that Church. Suit was brought for return of income tax, claiming the corporation sole was exempt as a religious organization. The Supreme Court held (263 U.S. at 581):

> "Whether the contention is well taken turns primarily on the meaning of the excepting clause, before quoted from the taxing act. Two matters apparent on the face of the clause go far toward settling its meaning. First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, and yet have a net income. Next, it says nothing about the source of the income, but makes the destination the ultimate test of exemption.
>
> "Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on, with income received from properties, dedicated to their pursuit. This

is particularly true of many charitable, scientific and educational corporations, and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation was created and conducted. This is recognized in *University v. People,* 99 U.S. 309. . . .

"The plaintiff, being a corporation sole, has no stockholders. It is legal representative of an ancient religious order, the members of which have, among other vows that of poverty. According to the Philippine law under which it was created, all of its properties are held for religious, charitable and educational purposes; and according to the facts stipulated it devotes and applies to those purposes all of the income-rents, dividends and interest from such properties. In using the properties to produce income, it therefore is adhering to and advancing those purposes, and not stepping aside from them or engaging in a business pursuit."

In *Retail Credit Association v. Comm'r,* (CCA-9), 90 F.2d 47, it was pointed out that the trade in chocolate, wine, etc. for profit in the *Trinidad* case (supra) was purely incidental to the religious purposes. It is clearly a "related" business under the present law on exempt organizations.

The present law on exempt organizations, although not applicable to these two cases because it became effective in 1951 now turns on "related business income" thus following the rule of *Trinidad v. Sagrada Orden,* 263 U.S. 578.

26 *U.S.C.A.* 511 (1954 Internal Revenue Code) taxes *unrelated business income* which is any trade or business, the conduct of which is not substantially related (aside from need) to exercise or performance of its charitable, or educational purpose. Where substantially all the work is carried on by the organization without compensation, as in the Student Minister Training Program of the Church, it is not taxable. The tax does not apply to churches. 26 U.S.C.A. 511.

The Tax Court in the instant cases found (R. p. 82-83):

> "In operation, activities of the Church members are of two types. Some members devote all of their time to working on Church projects and studying to be ministers of the Church's teachings. These are called student ministers, and they live in the apostolic societies called 'Student Minister Training Projects.' One purpose of these projects, most of which are engaged in commercial activities, is to spread the teachings of the Church by having the public witness the application of those teachings in everyday life. Some projects were not engaged in commercial activities but simply operated residential facilities for the Church members. Members living in both types of projects contributed their earnings to the Church. Other Church members lived at home and participated in Church activities. The Church operated a theological seminary."

The decision of the Tax Court also states:

> "The Church has no church buildings. Its principal reliance is on having its members live in a manner exemplifying Christ's teachings, particu-

larly by living in a selfless manner. Its student minister training projects, while engaging in commercial activities, were designed to permit the public to witness the application of Christ's teachings to everyday life. Thus the very means chosen by the Church to attain its spiritual purpose involve engaging in commercial activities through its principal temporal agency, the Committee, . . ."

The Church Committee filed a Form 990 return for September 1947 to 1948 (Exhibit 2) and for September 1948 to 1949 (Exhibit 4, finding page 84) as an exempt organization under Section 101, Subdivision 6, showing the facts required.

The Canon Law No. 12 provided that those who devoted their time and efforts to the Lord's work should have it made possible by meeting their needs and those of their families and dependents so they could devote their time, by the apostolic form of living. The Spiritual body officials determined how much was the budget therefor. The Committee then met those needs as a religious purpose. Only bare necessities were provided (R. p. 134, 118-119) and covered all living expenses of food, clothing, doctor bills, medication, etc. (R. p. 119). The group at San Bernardino of a dozen or more (R. p. 116) lived on a ranch and consequently produced much of their food, and therefore received less than average (R. p. 148). The total Student Minister Maintenance for fiscal year 1948 of 575 individuals was $202,890.47 (R. p. 122) which is $351 per person per year or $30 per person per month. This shows a frugal existence. The testimony shows the

members were dedicated to a religious crusade and gave freely and liberally of their income to it. They certainly never carried on or joined this crusade for personal gain. The bare existence was necessary but wholly incidental to the religious crusade.

The evidence and findings show the Church activities a means of application of Christianity to everyday life. It was a laboratory to apply the religious studies. It was the means of spreading their teachings of Christ as they believed it. It was their ministry.

Projects were selected and maintained upon the basis of more widely spreading the Church teachings by having the public come in contact with the student ministers in training, and to make it possible for the student ministers to express and live in their daily activities the teachings of the Church (R. p. 115-116). Any business operation was wholly incidental (R. p. 119). Some ran at a loss and the consideration of maintaining and continuing them was solely whether or not it was serving the purposes of promulgating the Church's teaching and its ministry (R. p. 120). The only salaries paid were those to personnel outside of the Church where a particular skill or training was needed and none was in the Church (R. p. 123). No one in the religious society was paid any salary (R. p. 123). Any excess above actual operation went to publications (R. p. 124), and to expanding the religious work through more facilities to permit others to learn this concept of religion (R. p. 126-127). It did not go to any better living for those in the ministry or their families (R. p. 126).

The expense of the practical applications which were an incident of and means of practicing, spreading the teachings of the Church were actually operated at a loss for the costs of supplies, power, etc. of the Student Minister Training plus the costs of the support of the labor in them, (Student Minister Maintenance), fell far short of the income (Student Minister Application) and the difference was made up by substantial gifts $137,491 (R. p. 121) and exhaustion of resources owned and used by the Church Committee. See Exhibits 2 and 3 for 1947-1948, and 5 and 6 for 1948-1949. They were not profitable in any sense of the term measured by commercial or accounting means. Measured by spiritual results and spreading of Christianity they were highly valuable.

That a Church would believe enough in Christianity to show the public by actual example to those who came in contact with it, does not make it any the less a religious activity or its purpose any the less a religious purpose. Its sole purpose is religion. That it uses a less conventional or a unique means does not make it any the less an exempt organization.

Any so-called commercial activity was purely incidental to and bore an incidental relationship to its religious purposes and was solely to carry out those religious purposes. It was related to the performance of its religious purposes.

5.

If the law on Exempt Organizations were not already in a hopeless conflict, particularly as to the

"ultimate destination" test interwoven with "exclusive," certainly the current 9th Circuit decision has added to the confusion. The 9th Circuit decision of *The John Danz Charitable Trust v. Commissioner,* 231 F. 2d 673, appears to hold that regardless of the source or means of the income, that if there is an allocation of income to the charitable use, the part segregated is not taxed, but exempt. The trust funds mingled with purely private funds to conduct speculative and commercial operations and loans without security were to the extent there was no allocation of its income to any exempt purposes, taxable as they should be. One would think that to the extent there was any segregation and allocation of income to any exempt purposes, the *Danz* case held the ultimate destination rule applicable. Certainly the factual situation was strong. The current decision cites this decision and discusses it, but does not clarify the law.

The Supreme Court in *Trinidad v. Sagrada Orden,* 263 U.S. 578, sets forth the law clearly and as a monument to guide the affairs of men. The decision recognizes that religious activities need money to carry out their religious purposes, and income from related activities as well as ownership of productive properties have long been used by religious organizations to provide those financial means, and the making of such property productive or income of related businesses did not make the activity taxable nor was it stepping aside from the religious purposes but was adhering to and advancing those purposes. This rule of related business income of exempt charitable organizations

is the one adopted by Congress in 1951, 26 U.S.C.A. 511, and which by express enactment excludes churches from the taxation of unrelated business income applied to other exempt organizations. It shows Congress intended that exempt organizations could have related business income and not be taxed nor lose their exempt status; and an exempt organization other than a church could have related business income and still be an exempt organization but taxed. Churches can be exempt organizations and still not be taxed for either related or unrelated business income.

The decision sought to be reviewed cites the *Trinidad* case, 263 U.S. 578 and indicates the 4th Circuit in the *Community Service* case, 189 F.2d 421 "weakened" the *Trinidad* case which is to say, *overruled* it.

The decision sought to be reviewed cited the 9th Circuit case of *Eaton Foundation v. Commissioner,* 219 F. 2d 527 which clearly repudiates the "ultimate destination" rule. It cites the *Squires v. Student Book Corp.,* 9 Cir., 191 F. 2d 1018 which refused to pass upon the "ultimate destination" rule by its express holding, but adopts the "intimate relationship" test which we have pointed out is applicable to the cases at bar to hold the Church and its Committee exempt organizations. It cites the 3rd Circuit decision of *C. F. Mueller Co. v. C.I.R.*, 190 F. 2d 120 that follows the "ultimate destination" rule. It cites *Smythe v. Calif. St. Automobile Ass'n* which stated in clear language approval of the "ultimate destination" rule and cited the *Trinidad* case favorably. It cited the *Roche's Beach, Inc. v. Comm'r,* 2 Cir. 96 F.2d 776 and recog-

nizes that *most* of the circuits have applied and followed the "ultimate destination" rule.

Certainly there is a conflict, open and unreconcilable on this rule of "ultimate destination" among the circuits and now in the various decisions of the 9th Circuit. The law on exempt organizations is in utter confusion.

E.

It is, or rather before the decision sought to be reviewed was, generally thought that the terms of a trust determines whether a gift were within Sec. 23 (o).

Most gifts in trust for charitable, religious, or educational purposes are made to banks, trust companies and other trustees who make no pretense of being exempt organizations. The terms of the trust determine whether the particular gift falls within the religious or charitable deduction of Sec. 23 (o). All of the donations made by both Grassmee from her wages and by Riker from her partnership were accompanied by written statements they were given for religious purposes *exclusively*. Even the trustee, the Church Committee, was by the Church Constitution and Canon Laws made an express trustee of such funds for religious purposes exclusively.

The decision sought to be reviewed turns its holding upon and specifically holds that neither the spiritual body's ecclesiastical organization nor the Church Committee were exempt organizations within Sec. 101(6) and as such the gift was not subject to the donor's religious deduction up to 15% of adjusted gross in-

come. It would appear that whether or not the trustee of an express trust were or were not an exempt organization would bear no relationship to the deduction, for the terms of the trust would be binding and determinative. We urge the Court to review this on certiorari.

II.

IS A PERSON TO BE TAXED GREATER BECAUSE OF RELIGIOUS BELIEFS BY FAILURE TO APPLY SEC. 23(o) TO THE COMPUTATION OF THE INCOME?

The instant case presents a factual situation where both of the petitioners are taxed more than others solely because of religious beliefs.

Had either of the petitioners different religious beliefs and made donations to some Church with a different type of organization exercising discipline over the group, a different tax would have resulted by having applicable the religious deduction of Sec. 23(o).

If Grassmee had made the same gifts to another religious body having a different ecclesiastical organization, the decision sought to be reviewed holds she would have had her income for tax purposes reduced by the 15% deduction. She was therefore taxed a substantial sum for her religious beliefs, and solely because of those beliefs.

Where is the right to Religious Freedom when taxes are a direct function of one's religious beliefs.

one's religious affiliations and the activity one takes in one's religious organization? Is this not religious discrimination of the clearest kind? The government should not prefer one religion over the other.

The decision sought to be reviewed holds that the petitioners' religious organization was not organized exclusively for religion. The record shows it was organized for religion alone. It shows that the spiritual body believes that religion should be applied, not merely talked about. The decision sought to be reviewed states that because of this concept, the church is not organized exclusively for religious purposes. If one believes that religion should be applied as well as talked about; that the spiritual organization should advocate and undertake to prove it and actually apply Christianity, then the petitioners should be taxed at a greater sum without the Sec. 23(o) religious gift deduction in computing taxable income.

It should be pointed out that when an official or judge can say certain religious beliefs are not his idea of religious beliefs, then every unpopular or small Church is subject to the this treatment and its members taxed at a different sum, because of having these religious beliefs.

A.

The Sec. 23(o) deduction for religious gifts in the computation of taxable income must apply regardless of whether the trustee or recipient of the donation is in fact an exempt organization, for it is the

terms of the trust not the tax status of the trustee that determines the application of the law. It need only be a gift for a specific purpose-exclusively for the religious purposes of one's church—clearly and unmistakably set forth with the gift of each of the petitioners.

B.

The decision sought to be reviewed points out that the Church Canon Law grants ecclesiastical control over the Committee and other temporal agencies of the Church. The Church Constitution, Art. VI requires separation of the ecclesiastical and temporal agencies, but places ecclesiastical control of ecclesiastical matters in the spiritual organization.

Ecclesiastical control *per se* is the acid test that determines whether a particular church organization or church is tax exempt and the membership subject to different rates of taxation by reason of the Sec. 23(o) deduction or its denial in computation of the individual's tax, according to the decision sought to be reviewed.

All churches in California must hold their property in trust for the spiritual body which is all important, and title and management is vested in trust in a church corporation, trustees or other body that are wholly subservient to the spiritual organization. Most other jurisdictions follow this same rule. Yet this law under which all churches must hold property, is by the decision sought to be reviewed the grounds for

denial of the religious donation exemption, Sec. 23(o) and for the denial of exemption of the particular church and its Committee.

The leading case of *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L.Ed. 666, holds a religious society's property is held in trust for the doctrines of the Church.

The leading case in California as to religious societies and their property is *Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 P. 841: This decision involved the dissolution of a church corporation and the division of the church to two separate organizations by the principal organization of the Church. The Court held that the spiritual or ecclesiastical body of the Church was all important, and that the Church corporation was a mere convenience to assist in the conduct of the temporal part of the Church, that notwithstanding the incorporation, the ecclesiastical body is still all important and the corporation is a subservient factor. The Supreme Court, in that decision went on to hold that a religious corporation is something peculiar unto itself, and that its function is to stand in the capacity of an agent holding title to property, with power to manage and control the property in accordance with th spiritual ends of the Church. The Supreme Court, in that case, held that the incorporation did not change the ecclesiastical status of the congregation, but only afforded a more advantageous civil status; that the directors or trustees of the Church corporation have no author-

ity over church affairs which rests with the ecclesiastical body. The Court held that property standing in the name of a Church corporation is held in trust for use of the Church proper, and the trustees hold the property for the use and enjoyment of the Church, and every member in it is a beneficiary of that trust. The Court held that the Church corporation held under a trust as completely as if the trust were declared by deed, and such a trust is not distinguishable from other trusts over which the court of equity have general supervisory powers.

The California Supreme Court in *Baker v. Ducker*, 79 Cal. 365, 21 Pac. 763, held that the property acquired by a religious society was held under a trust by the Church corporation, and a parsonage obtained by contributions could not be diverted to other uses by a majority of the membership. The case of *Bomar v. Mount Olive Missionary Baptist Church*, 92 Cal. App. 618, 286 Pac. 665, followed the doctrine of *Wheelock v. First Presbyterian Church*, 119 Cal. 477, and held that the ecclesiastical body was all important, and the corporation a subservient factor in the life and purposes of the church; and that the corporation was a mere agent or instrument for holding title to property and managing the temporal affairs.

It is stated in 22 *Cal. Jur.* 777, Relig. Soc. 5:

> ". . . It has been judicially observed that incorporation of religious bodies is permitted only to assist in the conduct of the temporalities of the church, and, notwithstanding incorporation, the ecclesiastical body is all important. The corporation is subordinate in the life and purposes of the

church. Its function is to stand in the place of an agent holding title to the property—managing it in the interest of the church as an ecclesiastical body . . ."

In 22 *Cal. Jur.* 785, Relig. Soc. 13, it is stated:

"The government of churches is in many cases committed to legislative bodies selected from members of the organization. Notwithstanding incorporation such ecclesiastical bodies are still all important. The corporation is a subordinate factor in the life and purposes of the church proper; its function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church. When so authorized by the church constitution, the ecclesiastical body may consolidate or dissolve the church, or change its name. And as to matters of purely ecclesiastical jurisprudence, its decision is conclusive upon the courts."

In 22 *Cal. Jur.* 788, Relig. Soc. 17, it is stated:

"But an unincorporated association can hold property only through the medium of trustees, acting as depositaries of the legal title, and each member or beneficiary has the same voice in the management and control of the property as if he were a joint owner and holder of the legal title. . . ."

It is stated in 45 *Am. Jur.* 758, Relig. Soc. 48:

"It is well settled that property both real and personal may be held in trust for the use of an unincorporated religious society. . . ."

Many churches, as does this Church of Christ's Church of The Golden Rule, divide the powers and authority. Spiritual matters are often conducted by an organization or Church Session. Property and matters secular are often handled by trustees, a non-profit corporation with directors or trustees or a corporation sole. The spiritual body or Church government is all important. It deals with doctrines, teachings, Church practices and services. The property or secular matters are conducted by a temporal agency or trustees, incorporated or unincorporated, who deal with the money and property, pay ministers, sextons, support religious training. They hold as trustees under a religious trust for the spiritual organization.

The cases hold that as to religious matters, the determination of the highest authority in the Church are conclusive in the Courts.

Gonzales v. Roman Catholic Church, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131;

Permanent Committee v. Pac. Synod of Presbyterian Churches, 157 Cal. 105, 106 P. 395.

Under our concepts of freedom of religion we leave matters wholly ecclesiastical to the Church such as who is qualified to be a chaplain of a parish, who is qualified by religious beliefs to admission into Church membership, matters of discipline, faith and ecclesiastical rule. Courts under our Constitution cannot sit as ecclesiastical tribunals to try questions of religious belief or faith. When such questions arise, the Courts deal only with property. Matters ecclesiastical are determined by ecclesiastical officials or Church gov-

ernments or authorities. The Court must accept their determinations and conclusions and then apply them to the property rights in dispute. This is true though the ecclesiastical matters which the Court must follow the particular Church government's determination effects the property rights at issue.

In *Permanent Com. of Missions v. Pacific S. Presbyterian Church,* 157 Cal. 105 it was held:

> "Lest we be understood to hold that the civil courts can disregard and overrule the decisions of the church authorities, acting regularly, in ecclesiastical matters, we expressly disavow that doctrine. We approve the principle laid down by the Supreme Court of the United States in *Watson v. Jones,* 80 U.S. 726, and by the Supreme Court of this state in *Horsman v. Allen,* 129 Cal. 136, relating to this subject. 'Whenever the questions of discipline, or of faith; or ecclesiastical rule, custom, or law have been decided by the highest of the church judiciatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.' *Watson v. Jones,* supra, 80 U.S. 727, 20 L. Ed. 666. This was said with reference to the Presbyterian Church, and it is declared to be the doctrine applicable to all churches having a similar system of ecclesiastical government. The doctrine has been followed in many other cases and, although not accepted in England, it is the prevailing rule in this country."

It is clear that because a Church follows the law of California and its spiritual body is governed by a

spiritual organization and its property is held and managed by a Committee who holds that property in trust for religious purposes and is subservient to and holds property and acts for the spiritual body, it is nevertheless an exempt organization in law, Section 101, Sub. 6. That the spiritual body may in its determination of ecclesiastical matters believe Christianity should be lived and it should be spread and taught by applying these teachings to everyday life so the public can witness them is hardly grounds for imposing a tax Congress did not intend.

These are matters of individual religious beliefs which one may or may not hold and if one holds them and joins a Church with similar beliefs Congress did not intend to tax one for one's religious beliefs as it results in the Riker and Grassmee cases.

C.

The computation of one's income taxes does not depend upon whether one has religious beliefs, religious affiliations or office in a religious organization whose religion is subject to the discipline of any particular form of religious organization or church government.

The type of ecclesiastical organization exercising ecclesiastical control over those having a common religious belief has no relationship to the taxes imposed by law. Otherwise the state will control and dominate the religious organizations and prefer one over the other. The effect of taxation or escape of taxation has a salutory and positive effect upon those subjected to the tax.

Yet such is the vice of the decision sought to be reviewed.

There are in general three classifications of Church organizations, or Church governments.

1. Episcopacy or Prelacy. In this form ultimate power and authority is vested in a single person or group.

2. Presbyterianism or representative form. In this group, ultimate power and control are vested in elected representatives meeting in sessions, presbyteries, synods, assemblies or conventions.

3. Congregationalism or independent form. Under this classification the majority vote of members in a meeting is the governing body.

54 *C. J.* 7, Religious Societies 4;

Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666.

The Ninth Circuit decision indicates that because the senior elder is granted certain powers, which are in effect the use of the episcopacy or prelacy form of Church government that therefore, the Church is not an exempt organization under Section 101 (6), nor are gifts to such a Church for religious purposes within Section 23(o). This holding would in effect deny both tax exemption and deduction of religious gifts to the majority of church members or donors because a majority of church affiliations are in religious societies using the episcopacy or prelacy form of Church government. This holding wholly disre-

gards the record which shows that the Church constitution and canon laws creates a presbyterian or representative form of Church government, and that ultimate control in all spiritual matters, including removal and selection of any officer, and including the acts of the senior elder or the board of elders or any other ecclesiastical official, is vested in the majority of the elected representatives meeting in convention. This holding disregards many other provisions of the organic laws of this Church.

Congress did not intend to grant or withhold the religious gift deduction of Section 23(o) upon the basis of religion nor upon whether or not any particular Church used or did not use any form of Church government. Any Church is free to use and adopt any form of Church government. Any attempt to interfere with ecclesiastical control by administrative action has no legal justification in this country.

Ecclesiastical organization is no test or determination of Section 23(o) deductions. The gift need only be for a religious use, and is not restricted to religious uses of Churches having a particular form of ecclesiastical Church government. Congress did not intend to discriminate between religions. The Commissioner of Internal Revenue should not be permitted to discriminate.

D.

Whether a person is to be taxed more by a denial of the religious gift deduction, Sec. 23(o) because the taxpayer holds religious beliefs common those under a spiritual organization that turns a blind eye to the

profit end, but nevertheless attempt to defer part of the religious training and ministry expenses by related income, a by-product of the church's spiritual activities appears shocking to merely ask it. It is far more shocking to find that the decision sought to be reviewed uses these very words is holding both petitioners subject to a greater tax by denial of that religious gift deduction.

The lifeblood of any church must come from its financial support. It cannot function without it. Nothing is more calculated to destroy a church, to discourage its active members and supporters than the imposition of a tax and the involvement of its members en mass in expensive and detailed audits and tax procedure because of church membership or religious beliefs.

Such is this case. These are two test cases upon which the rest of the membership's taxes will turn.

The holding of the decision sought to be reviewed is that although the Church and its members turn a blind eye to any profits in the Church activities used to spread the Christian teachings by illustration as part of its ministry and as part of the training of its student ministers in their laboratory work applying their studies, and lauded the spiritual ends. It is a fact that only part of the lifeblood of these activities was provided from the related income, a by-product of the religious work. The mere making of a charge, per se, means that the work is not "exclusively" operated for the exempt purpose. The donations must then lose the Sec. 23(o) status, and the

spiritual body and its various entities under its spiritual control must per se lose their exempt organization status, is the rule of this decision.

Congress not only recognizes by the recent Tax Code, 26 USCA 511 that it was possible for an exempt organization to have related income from business without losing the exempt status, but specifically *excluded* churches that can and do have both related and unrelated business income without losing their tax exempt status and without imposition of any tax upon that business income. The case of *Trinidad v. Sagrada Orden,* 263 U.S. 578 has long recognized that Churches can and do sell various articles for profit without departing from their religious purposes.

The decision sought to be reviewed has tremendous and far reaching implications. It holds that any activity in which there is sought money or profit, even though related to or as a result of the religious purposes, is a sufficient fact in and of itself to deny both the church its exempt status and all donors to that church's religious purposes the Sec. 23(o) deduction.

The factual statement in that decision shows that the Church and its members used the means to illustrate and apply Christianity and turned a blind eye to the profit end. The record shows that in fact there was no profit financially in any of the periods involved, from any of these activities, and in fact the costs of conducting them were more than the related income, a by-product of the spiritual activities. Donations made up the difference.

The decision sought to be reviewed holds, and is precedent not only for denying the Sec. 23(o) religious gift exemption but also the exempt organization status to any Church in which there is *ecclesiastical control* over any entity or organization under that control that makes charges of any kind to defray expenses or for profit.

This means that the Church of Latter Day Saints with its far flung interests, some of which are engaged in clearly commercial enterprises, will and must be taxed, and all gifts and tithes to the Church for religious purposes or any of its entities subject to its ecclesiastical control are no longer deductable as a charitable or religious donation.

This means that the Christian Science Church, because it maintains a large newspaper and publication society, sells newspapers and advertising, and exercises ecclesiastical control over this publication society and newspaper will be in this category and its donors denied religious deductions.

This means that the Catholic Church and all subject to its ecclestiastical control are taxable because some entities subject to its ecclestical control are engaged in selling to the public, as for example the Christian Brothers Winery in Napa, California.

It means that every church which has subject to its control any publication society that makes any charges for sale of its publication, runs a hospital where part of the costs are defrayed by charges to patients, or makes by any activity any charges, even if it lauds the spiritual end and turns a blind eye

to the profits, must also be and is within this classification.

No ecclesiastical organization could permit any organization or body under its discipline to exist without power to exercise control in spiritual matters.

The ecclesiastical control by the spiritual body's organization often does affect property, and from its very nature it must. For example, a congregation may be divided as *Wheelock v. First Presbyterian Church,* 119 Cal. 477 which in effect terminates the organization and creates two new entities, and the property of the congregation is directly affected thereby. There may be aschism or division in religious beliefs or organization, in which the spiritual body must of necessity recognize one group or faction, and in doing so affects the property, for it follows the group or faction recognized, for example see *Watkins v. Jones,* 80 U.S. 679.

All ecclesiastical organizations must from their very nature have final and ultimate control over all spiritual matters and disciple. In the case at bar, the spiritual organization is authorized to and does in effect exercise ecclesiastical control over the various entities within the Church, and in ecclesiastical matters it is final and conclusive even though it affects temporal matters thereby.

E.

Our political institutions are that religious beliefs by their very nature are not subject to governmental

discrimination, favoritism or control. If one wishes to be a Christian and profess Christianity or any other religion he may do so without fear of the rack or governmental interference. He may believe that Christianity need not be restricted to verbalizing—to words written, spoken or sung. He may believe that Christianity can be applied to every day life. He may join others with common beliefs in this matter of religion. He need not fear the rack or the tax collector for doing so.

Is the First Amendment, United States Constitution, guaranty of religious freedom still the law? Not according to the decision sought to be reviewed. It holds in clear and unmistakable language that taxes are to be imposed, and the tax collector shall discriminate because of religious beliefs and religion. It holds that if one does not confine one's concepts of religion to verbalizing, but advocates actually applying one's religion, not only is the believer subjected to a greater tax but the Church and its Committee not tax exempt. It holds that since the judge writing it cannot understand or perceive the "mystery" how a person could by serving in any restaurant demonstrate Christianity or act as a Christian. It alludes to the "garb of a waiter" and to the methods of the Church and its religious beliefs as being in that judge's opinion poorly designed to accomplish the results.

We should observe that the difference between profanity and prayer differ little in the vocabulary, but principally in the manner and attitude in which the words are spoken or used.

We should also observe that a garb of a clergyman can also cloak a saint or a sinner as it can a cook or a waiter; and that clothes do not necessarily make the man. A uniform will help make a soldier on the parade grounds, and may assist in battle; but when battle is the payoff, it is not the garb of the soldier that keeps a man in the face of death or from running. The thing that distinguishes a soldier from a coward is not the garb but the man; it is the character and training, not the dress; it is the substance not the form. So in this particular religion, it is the manner and attitude with which a person does everyday things that determines whether he is a saint or a sinner. It was never in prior decisions or the intention of Congress that the Sec. 23(o) deduction for religious donations depended upon the particular religion or whether it did or did not use an effective means to spread the particular religious beliefs.

We would like to suggest that it should not be a mystery as to how these religious teachings can be applied to everyday life, even in a restaurant. When a hungry patron finds that both the cook and waiter actually act in a selfless manner toward him; that the cook and the waiter seek to do unto him as they would have others do unto them, and they seek to and do give no thought to greed, selfishness or a desire to get something for themselves but solely to help others, it is possible this conduct and attitude would be welcomed, appreciated and understood. One must witness it to fully appreciate its effect. Such conduct and attitude engenders like response in all who enjoy

contact with these dedicated persons. Greed engenders an unfavorable response from those subjected to it. Selfishness engenders a similar response. Can it be that one has been so long subjected to employees driven by selfishness and other similar motives that it is not possible to understand the "mystery" of someone acting solely from religious motives of selflessness? Even cooks and waiters can act from selfless motives, despite the holding of the decision sought to be reviewed.

The decision has far reaching effect when it holds that the person making a gift for religious purposes will or will not be entitled to Sec. 23(o) deduction, and therefore taxed greater or less, depending upon his or her religious beliefs, and whether these religious beliefs are disseminated by means which the particular judge or administrative official applying the law considers to be ineffective means, or a mystery to him.

F.

It appears basic that one may hold religious beliefs common with others and subject to ecclesiastical control of a spiritual organization that because of its principles and doctrine of giving with no thought of getting, provides its officials and those engaged in its religious work along with their dependents may be supplied with the necessities of life, in order to permit them to devote their full time to the religious work without thought of personal gain in any form. To do so, does not subject this person to governmental discrimination nor incur greater tax liability thereby.

This decision sought to be reviewed holds that if a person does not receive pay or salary, but merely has bare necessities provided to permit the person to work in the religious activities, then the necessities inure to the benefit of the individual, and consequently there is a greater tax upon the person having that religious belief.

There are members who live at home and who are no part of the apostolic religious society of the Church. There are members who live in their homes and who are not part of the apostolic religious society or association of the Church. There are others who are student ministers (including Church officials) engaged full time or substantially full time in the Church studies and ministry. Support by the apostolic society form of living is provided for such persons and their dependents. No wages are paid. The Court in the decision sought to be reviewed points out and holds that because these officials and full time workers in the Church's religious work and studies receive this small and meagre assistance, then the mere providing of subsistence is per se grounds for denial of any donation deduction and of the religious organization exemption. The receipt of a salary or other expenses would be stronger grounds.

Heretofore, it has been considered proper for a church or other religious organization to pay salaries and expenses of those engaged in the Church's work. This decision can well stand examination as to its implications, holding and far reaching effect, and its novel and new concept that providing church officials

or those working in the religious cause with any assistance however meagre to permit the work to be undertaken, is to permit this assistance to inure to the benefit of the individual. How any religious work can be accomplished without the providing of means to do it is not explained.

III.

THE PETITIONERS ARE NOT TAXABLE FOR RELATED INCOME OF THEIR CHURCH'S RELIGIOUS ACTIVITIES BECAUSE OF MEMBERSHIP OR OFFICE OR RELIGIOUS BELIEFS.

Riker is taxed for the $8959.11 related gross receipts after deduction of only certain expenses paid by the Committee, but not the student minister maintenance of the group of 12 to 17 whose efforts produced that related income. It is clearly the by-product of the group's services in the religious activity and the use and depletion of the property, most of which was created by money of the Committee and the efforts of the group and only a small part were the fixtures furnished by the taxpayer and her husband. These same fixtures were sold by and the claim settled by the Committee.

Riker, if she is to be taxed for the receipts of the group from the start of her taxable year in September 1947 to January 1948 must be taxed because of her membership and her religious office as spiritual instructor to the group.

After the Church project terminated in January 1948, she conducted a business at the location, with

various partners, to permit the Committee to sell the property. The product of both the use of the equipment and assets and the exhaustion or depletion by use together with Riker's services represented by her receipts from the various partnerships were donated to the Church without segregation. She should be entitled to the Sec. 23(o) religious gift deduction, if this is taxable to her. As a member of the Apostolic Society she along with all the others reported their pro-rata share of the gross receipts of the group without deduction of the costs of student minister maintenance. The Commissioner taxed Riker not only for the money produced by the local group at San Bernardino, but also that same money was again taxed to all in the Apostolic Society (including Riker who was taxed upon two pro-rata shares, her own share and her young daughter's share) as a "dividend" although not received. The Committee's returns as an Apostolic Religious society included among the gross receipts both the application for student minister training (which included the gross receipts from the San Bernardino group) and also all gifts from individuals which included Riker's partnership shares after the Church project terminated in January 1948.

The taxation of both Grassmee and Riker without deduction of the Sec. 23(o) charitable or religious gift deduction in computation of taxable income was not dependent upon office or membership in the Church, but solely because they held religious beliefs in common with others whose spiritual organization and its religious beliefs do not meet the standards of

the Commissioner nor the members of the courts passing on these taxes.

When one is taxed more because of religious beliefs, even though the gift was given with a written direction enforcable as a trust, for religious purposes exclusively, we submit there is an unconstitutional discrimination which cries for relief.

Had this been a gift to some organization which was not within the tax exemption provisions and not a gift for religious purposes exclusively, the religious beliefs would not be involved.

Had each of the taxpayers made the same gifts with the same written communication substituting the name of some financial institution as the recipient to use the money exclusively for the religious purposes of a certain faith as was done in the case at bar, no one would contend that because the financial institution was a taxable commercial enterprise the gift would not have been a valid gift to religious uses exclusively and deductible from the donor's adjusted gross income in computing taxable income.

Because the donors in this case held the specific beliefs of religion which the Court found a "mystery" and whose spiritual organization had a certain form of church government, it follows they are taxable at a different rate.

IV.

WHETHER THE PETITIONERS AS MEMBERS OF AN APOSTOLIC RELIGIOUS ASSOCIATION WITH A COMMON COMMUNITY TREASURY AND WHICH ASSOCIATION FILES RETURNS AS SUCH UNDER SEC. 101(18) AND THE MEMBERS FILE THEIR TAX RETURNS INCLUDING THE PRO RATA SHARE WHETHER RECEIVED OR NOT ARE TAXABLE ON MORE THAN THEIR PRO RATA SHARE IS RAISED BY THIS PETITION.

26 USCA 101(18) provided that religious or apostolic associations are tax exempt if the association has a common community treasury, even if it engage in business for common benefit of the members, if the members include in their gross income their pro rata shares, whether distributed or not, of the net income of the association.

In each of the years the Committee filed its return under the Commissioner's regulations showing both donations and student minister training applications (the by-product of the ministry and religious work) and listed the expenses including the student minister maintenance. The pro rata share without deduction of all these expenses were reported by each member including the two petitioners as a dividend under this statute, but not received.

By good accounting practices and business concepts, where most of the revenue received is the product of personal services, the cost of the personal services are always deducted with other direct expenses to arrive at net income. In the instant matter, the cost to the Church committee in conducting the religious training and ministry projects was not only the various direct

costs connected with the activity but included the maintenance actually paid by the Committee for those performing the services. In neither year did the student minister training applications which were the gross revenues of a by-product of the training and ministry cover nor meet the direct expenses of the Committee including the student minister maintenance, however small per individual, of those engaged in that religious work. The difference was met by substantial donations.

Since the various religious activities conducted by the Church Committee were solely for religious purposes, and the sole consideration was whether the particular activity best performed the religious functions of the ministry and laboratory training of the student ministers, this result was not unexpected. Those engaged in the Church work did so from religious motives, certainly not for the bare existence of but a few dollars a month to make it possible for these dedicated persons to spread and study their religious concepts and beliefs. The satisfaction of seeing religion actually applied and the public acceptance of those who witnessed it was the reward of those dedicated persons.

A.

An organization can be exempt under two subdivisions of Sec. 101 for they are cumulative and not mutually exclusive.

U.S. v. Pickwick Elec. Membership Corp. (C.C.A.-6) 158 Fed. 272.

B.

The provisions of Sec. 101(18) concerning apostolic or religious associations have not been the subject of judicially reported decisions. This case is one of first impression.

There are two cases which antedate the enactment of Subdivision 18. They are *Hutterische Bruder Gemeinde,* 1 Board Tax App. 1028, and *Hofer v. U.S.* 64 Ct. Cl. 672. After these cases were decided Congress enacted Section 101, subdivision 18, in 1936.

The *Hutterische Bruder Gemeinde* and *Hofer* cases are not applicable here because they involve an isolated community, living by themselves and having only a religious bond, not undertaking to teach, spread or affect any community with their religion; any increase in income immediately redounded and inured to the individuals in the group. In the case at bar, whether or not there is any income, or whether or not any particular ministry produces income, makes no difference in the standard of living of those in the apostolic society of this Church because, and the evidence shows, that the budget for living of the apostolic society is set by the ecclesiastical officials, not the committee handling the money and property, irrespective of the money obtained from any particular ministerial activity, and all groups are treated the same within this apostolic society.

This apostolic society is but a means selected to permit some of those in the Church to engage full time in their Church work and to accomplish the doctrines,

teachings and principles of the Church by living the concepts taught. Canon Law 12 (R. p. 41) provides:

> "It being a doctrine of the ecclesiastical Church Government that no person shall profit from the Lord's purse, nor that any person shall profit nor commercialize nor financially benefit from the property subject to the religious trust under these canon laws or under the control or direction of any temporal agency under these canon laws, and it being the intention of the ecclesiastical Church Government that only those who are genuinely interested in the Christian crusade and ministry of the Church shall be assisted to carry on this crusade and ministry, it is directed:
>
> (1) No salaries, wages or other compensation shall be paid those persons under these canon laws in their work, studies or efforts in carrying out the religious purposes of the religious society except as in Canon Law No. 19 provided. . . ." (No salaries have been paid to any person in the Church (R. p. 123). No written authority has been given under the Canon Laws to pay any salary, wages or compensation to any person in this Church (R. p. 123).)
>
> "(2) As the material needs of the various persons and their families and dependents must of necessity be met to permit these persons to dedicate their work, services, and studies to carry out the religious purposes of the ecclesiastical society the religious apostolic society form of living is selected as the means to accomplish these results in accordance with the doctrines, teachings and principles of the ecclesiastical Church Government. . . ."

There are numerous cases reported in the decisions involving apostolic societies. The particular concepts and interpretations of the Bible are as varied as there are sects and churches. About 100 years ago, there were numerous small communities started in the various frontiers of this country. Groups having a common religious bond, many of them immigrants from Germany, formed apostolic societies. Some of the groups prospered and some did not and disappeared. Of those that prospered, litigation sometimes arose by those who sought to withdraw and obtain a part of the group's assets.

For examples of litigation arising from and describing apostolic societies see *State v. Amana Society,* 132 Iowa 304, 109 N.W. 894; *Schwartz v. Duss,* 187 U.S. 8, 47 L. Ed. 53, 23 S. Ct. 4; (*Harmony Society*), *Goesele v. Bimeler,* 14 How. 589, 14 L. Ed. 554; *Order of St. Benedict v. Steinhauer,* 234 U.S. 640, 54 L. Ed. 1512, 34 S. Ct. 932, and *Ruse v. Williams,* 14 Ariz. 445, 130 P. 887 from which we quote:

> "It may be stated in the words of a witness: 'We were asked if we were willing to give up all for the Lord, and were referred to the fourth and fifth chapters of Acts to read; and, of course, we said we were willing to give up all and spend our time for the benefit of saving souls and for the benefit of the Lord. We were supposed to live as one family, and when one needed anything, whether they put anything in the treasury or not, they were to have it.'
>
> That such was a high ideal none can question who believe in the Holy Writings, or who has but

the least degree of a common historical faith. The belief of the plaintiff and the devotion of the little class of which he became a member, to further the aspirations of which he dedicated his all, is not without support in the Scriptures. The early Christians, who were converted on the day of Pentecost, it is said, continued steadfastly in the Apostolic doctrine: 'And all the multitude of them that believed were of one heart and of one soul; neither said any of them that aught of the things which he possessed was his own; but they had all things in common. Neither was there any among them that lacked; for as many as were possessors of land or houses sold them, and brought the prices of the things that were sold, and laid them down at the Apostles' feet; and distribution was made unto every man according as he had need.' Acts ii, 44, 45; iv, 32, 34, 35.

The plaintiff, in common with the other members of the class, interpreting the Scriptures to enjoin communal life as a cardinal doctrine of the Christian faith, should not be heard to complain that the substance which each contributed to the family fund has been consumed by the family, and others who were found hungry, as the substance was intended to be consumed. Indeed, that the contributions made by plaintiff and the others were for no temporary expediency, or with any thought of a return, is emphasized by reading in the chapter quoted of the awful fate of Ananias and Sapphira, his wife, for their hypocracy in concealing a part of the price of their property. This visitation of wrath, we are persuaded, must have deeply impressed the mind

of plaintiff; for it is not intimated in the record that he was guilty of the concealment of any part of the price in making his contribution."

The record shows that this Church as a part of its activity conducted a religious apostolic society; that it had a common community treasury and that it followed its interpretation of the portion of the Book of Acts, describing the early Christian Church. The record shows that in the two years involved, the Elected Delegates Committee filed returns not only as an exempt organization under Subdivision 6, but also as an exempt organization as a religious apostolic society under Subdivision 18, and that the members in the apostolic society filed their returns showing a distributive share under Subdivision 18 and the Commissioner's regulations, even though it was not received by them.

We find nothing in the provisions of Subdivision 18, or of any regulation, or of any ruling of the Commissioner reported in any tax service purporting to show that Subdivision 18 is intended to afford tax relief to any individuals living in or a part of any religious or apostolic society. On the contrary, the return 1065 required by the Commissioner is a partnership return; and a tax is imposed upon those in the apostolic society identical to a partnership. Indeed, a tax is levied in excess of any actual benefit or income received, including income not used for the member and in which the taxed members under the decided cases can have no interest and may never enjoy, and for actual income of a religious organiza-

tion which is otherwise tax exempt and used and useable solely for religious purposes.

The Ninth Circuit decision holds that because a very meager and austere living is provided those in the Church's ministry, therefore the members share in the net income of the Church. Much of the money obtained by religious, charitable and educational institutions are used for salaries, wages, and living expenses of those engaged in that work. It has long been established without question that a university may hire professors and still be an exempt organization. Hospitals can and do hire, doctors, nurses and orderlies and still retain their status as exempt organizations. Churches can and do hire ministers, sextons, musicians and others and still retain their tax exempt status. Every institution which we consider tax exempt that even undertook to pay actual expenses of living of those and their dependents engaged in its activities so such persons could work without compensation would also be taxed because by this court's decision such a person, although not receiving any salary, would receive personal benefit from the religious, charitable or educational funds. The fact that no salary is paid and a bare subsistence provided to those working in the Church's ministry, and spending full time in the Church's studies and activities, and because necessities must be provided for those so engaged, and for their dependents, it follows that they are no different than any volunteer worker in any religious cause, who must have his bare necessities met to enable him to carry on the religious work.

C.

The decision sought to be reviewed holds this section a "deduction" when in fact it taxes the individual members upon the theory of a partnership for funds which they do not receive, and by all the reported decisions involving apostolic societies no member can withdraw these funds when leaving or while in the group.

The decision sought to be reviewed holds that the petitioners receive a benefit inuring to them as individuals sufficient to defeat both the exempt organization provisions of Sec. 101(6) and the religious gift deduction of Sec. 23(o). Yet in the same decision it holds that these same petitioners have only "spiritual comfort" and no tangible and worldly interest in the Church revenues and Church property.

One or the other must be true. Both cannot be true.

D.

In view of the express organic laws of the Church, Canon Law 12 (R. p. 41) this form of living is selected as a means of accomplishing the religious purposes and to provide for the material needs of those and their dependents to dedicate their time and services to the Church work. Other religious organizations and other exempt organizations such as charitable and educational institutions provide cash payment or salaries to their members in return for their services, but such procedure is not in accordance with this Church's religious doctrines or beliefs.

It would follow, but for the religious beliefs upon which the decision sought to be reviewed turns, that ordinary rules would be applicable to gifts and income of ordinary religious organization and that the apostolic society was used as part of the religious concept of living a selfless life taught by the Book of Acts and a means of providing the necessities of life to those engaged in the Church work.

V.

THIS PETITION PRESENTS THE NOVEL QUESTIONS AS TO HOW THOSE REPORTING A PRO RATA SHARE UNDER SEC. 101(18) ARE TO BE TAXED.

Where a substantial sum of the gross receipts of the Committee holding the common community treasury of the apostolic religious association constitutes gifts much of which were earned by those in the association, a novel question is presented.

The Commissioner solved this by taxing Riker for the gross receipts of her group in the apostolic religious society deducting only part of the Committee's expenses. He taxed her for all the partnership portions while Riker was operating the facilities no longer used for religious purposes until the Committee could salvage the funds it held in trust for religious purposes. Not satisfied with this, he added to her income her pro rata share of the donations and student minister training applications without deduction

of the student minister cost of maintenance, not for Riker alone, but for herself and her daughter.

The Commissioner solved this by taxing Grassmee for her small wages she earned working in a law office and gave to her Church for religious purposes exclusively. Not satisfied with this he taxed her for Grassmee's pro rata share and also for the dependent mother's pro rata share. Although Grassmee was taxed for her mother's pro rata share, as a dividend but not received, the personal exemption of the mother was disallowed. The decision sought to be reviewed finds no fault with this. Grassmee must pay not only her withholding tax but a substantial sum (for her), with interest, in additional taxes; unless this petition for certiorari is granted.

A.

Should the Committee holding the common community treasury report only the Student Minister Training Application, and show only its loss, as gifts are not taxable income, OR should it report all money from all sources including gifts as it has reported them?

(1) If the Committee reported only related income of the Student Minister Training Application, and deducted by good accounting practices its costs therefor, it would deduct not only costs of operations for supplies and power, and rent, but also costs of its labor which is Student Minister Maintenance. This would be a substantial net loss for both 1948 and 1949.

The pro-rata share would be a substantial loss instead of income.

(2) If the Committee reported donations along with its related income, and without deducting Student Minister Maintenance there would be a pro rata net income. However, as the income given to the Church Committee would be reported by it and each member would pay a proportional share of these donations, is the donor of gifts taxable when earned, and again to each member on the same earnings, including the donor?

(3) By law a minister of the gospel does not pay income tax on the housing furnished him as part of his compensation (26 *USCA* 107). Do those engaged in the ministry of their church and working without compensation but who have their bare necessities furnished them to permit this religious work through an apostolic religious society include within their pro-rata share the costs of the housing furnished them? Are only those who are engaged in ministry for compensation to have the benefit of this legislation, or does it extend to ministers of the gospel who live in the apostolic religious form of living? The law cannot prefer one religion over another, under our concept of religious freedom.

It can be seen that application of contentions by the Commissioner lead to absurd results:

(a) Mrs. Riker is taxed as her income all funds earned by her group as related income whether the product of the group's services or product of the Church's property.

(b) Mrs. Riker transmitted all of the related income of the group and the Church property with written Church forms that the money must be used for religious purposes. Though taxed as personal income she cannot even deduct the 15% of these funds under Sec. 23(o) as a religious gift.

(c) Mrs. Riker donated the product of her effort and labor under the partnerships together with the product of the capital and equipment of the Church, partly exhausted in these efforts and earnings. The purpose of these operations is to permit the Church to sell its equipment and salvage its capital investment. Even this income for religious purposes donated to the Church the Commissioner contends is not subject to 15% deduction of Sec. 23(o).

(d) Mrs. Riker reported her pro-rata share of the income of the Apostolic Committee, which Apostolic Society returns included both the Group related earnings of $8,959.11 and her donations from the partnership efforts on which the Commissioner sought to impose a tax. She reported two pro-rata shares of $377.39; one for herself and one for her daughter, a total of $754.78. The Commissioner in the deficiency computation, part of the record as an exhibit to the petition before the Tax Court, sought a tax on not only the group's related income to her, and the donation of the partnership efforts but also to tax Mrs. Riker for these *plus* her pro-rata shares of herself and daughter of the Apostolic Society's income which included both these sums of Group related income and her own donations. No 15% deduction was allowed under Sec. 23(o).

(e) Mrs. Grassmee is sought to be taxed by the Commissioner in her deficiency letter, an exhibit to her petition to the Tax Court, not only for her personal earnings all of which she gave to her Church with a writing stating it was for religious purposes, but also for her pro-rata share of the Apostolic Group which included this very gift she made. She and all of the individuals of the Apostolic Society are taxed on these same earnings as they make up a part of the donations, a substantial part of the Association's income.

(f) Mrs. Grassmee is not even permitted by the Commissioner's contention a Sec. 23(o) deduction for gifts to her Church for religious purposes, but taxed for earning the money and then on her pro-rata share of all gifts including her own, made to the Church.

(g) Not only is the assessment made seeking to tax Mrs. Grassmee for her earnings given to the Church, but also for *two* distributive shares, one for herself and one for her mother, yet the Commissioner claims she is taxable without taking the personal exemption of the mother.

VI.

RIKER SHOULD NOT BE TAXED FOR THE INCOME, A BY-PRODUCT OF THE RELIGIOUS GROUPS WORK AND FOR MISTAKES IN THE INFORMATION ATTACHED TO HER RETURNS.

Riker reported her pro-rata share of the apostolic association income without deduction of the principal

costs of services used to create the student minister training application revenues, both for herself and her daughter and computed her tax upon it. She prepared other information showing the gross and some of the expenses of the religious group and attached it to her return. She filed her partnership returns showing the small sums handled and the sums she remitted to her church. This was from an abundance of caution.

By error, the record shows that she overstated the gross receipts of the student minister training project from September 1947 to January 1948 and she excluded a substantial part of the expenses actually spent by her partnerships. It totalled $2900 in error making a substantially larger apparent income than she actually handled. The Commissioner seized upon this information attached to her returns and determined a deficiency of about $1400 against her.

The evidence and the record shows the errors. Nevertheless the tax is upon the basis of the excessive sums and not on the true sums handled by her and her group.

If she is in fact taxable for income of her religious group of which she was a spiritual leader, should it not be for the actual sums involved? If she is taxable for the partnership shares she remitted in full to the committee from January 1948 on, should it not be for the actual net sums? Could the religious beliefs of the petitioner have blinded redress? We pose this question because there is no conflict nor claim that she actually handled or transmitted the sums upon which

she is held liable by the decision sought to be reviewed, but only a lesser sum.

Mrs. Riker was and is a spiritually motivated person, dedicated to her religious crusade. She was not an accountant. Her errors in bookkeeping and tax reporting (intended solely for information) and not upon what she computed her tax, when proved, should be sufficient to require the tax to be determined on actual sums involved.

VII.

GRASSMEE SHOULD BE PERMITTED TO DEDUCT HER AGED AND DEPENDENT MOTHER AS A PERSONAL EXEMPTION FOR INCOME TAX COMPUTATIONS.

The decision sought to be reviewed by this petition holds that Grassmee is not entitled to deduct the personal exemption for her dependent and 84-5 year old mother. It holds Grassmee has income of the Church inuring to her benefit from living with the apostolic religious association. Because the aged and dependent mother also resides in the group (because of her dependency upon her daughter) the decision holds she was not dependent.

Evidently the decision considers that enough benefit accrues to Grassmee who lives in the apostolic religious association to defeat her right to a Sec. 23(o) religious deduction in computation of her tax, but this same benefit does not accrue to the mother. The decision holds that this same accruing benefit is no more than "spiritual comfort" under Sec. 101(18).

We ask, then, who supported the mother?

It would be possible for small children and aged dependents of those in the apostolic society to have returns made by them reporting the pro rata share resulting in a mass of individual returns filed. We think the better practice is that where family groups live together whether in their own home or in some religious group, they should make and file their returns, as all others do, by family groups and deduct the personal exemptions of each in such family. This both Riker and Grassmee did.

Riker had a small daughter living with her, and she included in her return two pro-rata shares as "dividends" under Sec. 101(18) and deducted the personal exemptions for herself and her small daughter. With this the Commissioner found no fault. Grassmee did the same for herself and her dependent mother. The Commissioner and the decision find fault. Why there is a distinction, we cannot explain.

Does it mean that those within Sec. 101(18) in a religious apostolic association are taxable for the pro-rata shares of the dependents reported in their returns but cannot take the personal exemptions for dependency? Does it mean only dependent mothers are not included?

WHEREFORE your petitioners pray that a writ of certiorari issue or be allowed or granted; that the said United States Court of Appeals, for the Ninth Circuit in said case No. 15072 of Riker and Grassmee v. Commissioner of Internal Revenue decision and judgment be reviewed and the record transferred and

lodged with this court, and petitioners pray for such other and further or other or further orders, relief, decrees and/or judgments as shall be just and equitable in the premises.

Dated, San Francisco, California,
July 8, 1957.

HOWARD B. CRITTENDEN, JR.,
Attorney for Petitioners
Riker and Grassmee.

(Appendices Follow.)

Appendix

United States Court of Appeals
for the Ninth Circuit

Peggy Lou Riker and Freda H. Grassmee, *Appellants,* vs. Commissioner of Internal Revenue, *Appellee.*	No. 15,072 April 12, 1957

On Petition for Review of the Decision of the Tax Court of the United States.

Before: DENMAN, Chief Judge, FEE, Circuit Judge, and ROSS, District Judge.

ROSS, District Judge.

This is an appeal from a decision of the United States Tax Court in the consolidated cases of Freda H. Grassmee, and Peggy Lou Riker, under 26 U.S.C.A. 7482. We will develop the factual background, first as to Freda Grassmee, second as to Peggy Lou Riker, and third as to Christ's Church of the Golden Rule. Mrs. Grassmee will be referred to as Grassmee, Peggy Lou Riker as Riker, and Christ's Church of the Golden Rule simply as the Church.

GRASSMEE

Grassmee and her eighty-four year old mother were members of the Church group. She was employed in a

law office during the tax years in question, 1948 and 1949, and during that period contributed her entire salary to the Church. She and her mother lived in a housing project maintained by the Church, and the entire subsistence of both mother and daughter was furnished by the Church. In short, Grassmee contributed all her earnings to the Church and the Church in return took care of all of the subsistence needs of herself and mother. The mother, due to her age, contributed nothing to the Church by way of money or services. The contributions made by Grassmee to the Church were accompanied by Church Form 399, which specified that the donations were to be used exclusively for the religious purposes of the Church.

In making her income tax returns Grassmee claimed credit for the 15% deduction permitted by Section 23(o), Title 26 U.S.C.A., (1939 Internal Revenue Act, as amended), on her entire earnings contributed to the Church for religious use, and claimed two personal exemptions, one for herself and one for her mother.

The Commissioner disallowed the deductions claimed under Section 23(o). Grassmee then filed her petition with the United States Tax Court seeking a redetermination of her tax liability. In his answer and amended answer to the petition the Commissioner took the position she was not entitled to the Section 23(o) deduction, and also asserted that she was not entitled to a dependency deduction for her mother. The Tax Court sustained the Commissioner.

So far as Grassmee is concerned this Court must determine the following questions:

1. Was the Church, or the Elected Delegates Committee, hereinafter referred to as the Committee, the temporal agency of the Church, such a religious organization as to come within the provisions and meaning of Section 23(o), thus permitting her as the donor of her salary to claim the 15% deduction.

2. Was she entitled to the dependency deduction provided for in Section 25, T. 26 U.S.C. (1939 Revenue Code, as amended).

3. Was the Church such a religious organization as to come under the provisions of Section 101(18), Title 26, U.S.C. (1939 Internal Revenue Act, as amended), allowing her to make her tax return on that basis, namely, by showing her individual portion of the Church income by way of dividend.

RIKER

Peggy Lou Riker and her husband were also members of the Church group, having joined the San Bernardino group in 1947. Prior to joining they operated a drug store in partnership with Mr. Riker's parents. On the termination of the partnership business the Rikers took the store equipment and made a cash settlement with Riker's parents. They then acquired a parcel of real estate and on it, with their fixtures, opened up a restaurant under the name of "Your Food Fountain" which was conducted as a Church project. The business was operated by Riker as a project manager and was staffed by a group of Church members known as "Student Ministers." During all of the time the business was operated no salaries were

paid to the student ministers nor did Riker draw a salary or retain any of its receipts.

The record indicates that Riker paid the entire gross receipts of the business over to the Committee, and the Committee in turn set up a fund from the general Church treasury from which all of the cost and operating expense of the restaurant was paid. The Rikers and the student minister group were furnished living quarters and subsistence by the Church.

The situation surrounding the ownership and operation of "Your Food Fountain" is somewhat confused by reason of the fact that the Church went into bankruptcy in 1945 and was being so administered during the tax years here in question. Respondent's brief points out that "it is a fundamental assumption of the Tax Court that the restaurant business, Your Food Fountain, was an asset of the bankrupt Church." Like counsel, we take the view that if such was the assumption of the Tax Court then it is error, for we are of the opinion that the record leads to the opposite conclusion, namely, that the business as well as the physical properties of the business was at all times owned by Riker. That everyone concerned were also in confusion see the agreement with the trustees in Bankruptcy. The Referee in Bankruptcy authorized the trustees to enter into an agreement with Riker for the operation of the restaurant business during the pendency of litigation "to determine the ownership thereof." The agreement was approved by the Referee in his order of May 15, 1947, and reads in part as follows:

"To the end that provisions may be made for the operation of Your Food Fountain . . . so as to preserve the said business and its good will during the pendency of the summary proceedings in the United States District Court relative to the conflicting claims of ownership, the trustees propose the following arrangement: . . ."

Pursuant to this preamble the agreement provided that Riker was to continue to operate the business for her own profit until such time as the ownership thereof was determined, paying all expenses incident thereto, and depositing a certain amount monthly in a trust fund to be maintained by the trustees to be paid over to such of the parties as might finally be determined to be the owner. The agreement became effective April 15, 1947, and was to continue until such time as terminated by the parties or until such time as the Court might determine the matter of ownership, and was to be without prejudice as to the rights of either party on the question of ownership. The record bears out the following recital of Riker's operations.

From May 1947, the restaurant was operated under this management (referring to the plan agreed upon between Riker and the trustees). Of this period from May 1947 until January 1948, the restaurant was run as a "Church project," and the earnings were turned over to the Committee by Riker. From January 1948 until June 1948, Riker ran the business in partnership with persons who were not members of the Church, and from June until September 1948, she operated the business on a percentage basis with a prospective

purchaser. Her partnership share of the restaurant's earnings was contributed to the Committee. For five months of her fiscal year 1948, January 20 to June 30, Riker filed partnership returns for three different partnerships that operated the restaurant in this period. In July 1948, the assets of the restaurant were sold to the Committee for $1,500. Riker consented to the sale.

Riker filed an income tax return for her fiscal year 1948 (October 1, 1947, until September 30, 1948), which disclosed a net profit of $7,568.25 from the operation of a restaurant business under the name of "Your Food Fountain." A memorandum attached to the return reads as follows:

"ITEM 2. *WAGES, ETC.* Taxpayer was employed by Own Business for a gross income of $8959.11 during the taxable year. However, under the rules of the apostolic society (of which taxpayer is an associate) that all in the society share their income, $8959.11 was contributed to and became a part of the income for the apostolic society, and is reported as part thereof. Taxpayer would therefore, be taxed twice on the same income by reporting it as wages and also as a dividend. For this reason, this latter sum is reported only as part of the dividend or taxpayer's pro rata share of the net income of said apostolic religious society. (See Item #3 Dividends.)

ITEM 3. *DIVIDENDS.* 1/575 interest in $217,001.54 net income of the Elected Delegates' Committee of the Ecclesiastical Society of CHRIST'S CHURCH OF THE GOLDEN RULE, an Apostolic Religious

Association, for its accounting period of Oct. 1, 1947 to Oct. 1, 1948. This was not received as a dividend, but is reported under Sec. 101(18)—Per person in Association $377.39.

Number of persons in taxpayer's family who were in association and obtained support from Society during Period:

2 times $377.39 . . . (mother and daughter) . . . $754.78.

In her return for 1948, Peggy Lou claimed the sum of $8,959.11 as a deductible contribution to the Church. This claim was disallowed by the Commissioner and this Action was alleged as error in the original petition. In an amended petition, it was prayed that the income of the Fountain be found to be the income of the Church.

The Tax Court sustained the Commissioner's determinations and held (1) that the income derived from the operation of the Fountain by Peggy Lou was her income and not that of the Church organization to which she contributed it; (2) that no part of the amounts contributed to the Church by the taxpayer was deductible as a contribution to a religious organization since the Church was not organized and operated exclusively for religious purposes within the meaning of Section 23(o) of the Internal Revenue Code of 1939; . . ."

In connection with Riker's tax return we are confronted with the following questions:

1. Was the restaurant business known as Your Food Fountain owned and operated by the Church

with Riker as project manager, or was it owned and operated by Riker.

2. If the business was owned and operated by Riker, in which event the proceeds therefrom would belong to her and her contribution of the proceeds to the Committee of the Church would constitute a gift, would she be entitled to the Section 23(o) deduction of 15%. It is to be observed that by her amended petition in the Tax Court she abandoned this position and claimed that the income belonged to the Church.

3. If the business was not owned and operated by Riker, was it operated by the Ecclesiastical Church, or by the Elected Delegates Committee, the so-called temporal agency, in which event it would be a "feeder" organization. This calls for the application of Section 101(6).

4. If the business was operated by the Committee, and it should appear that the Committee was not a separate entity from the Church, that is a "feeder" type organization, but an integral part thereof, is the Church such an organization as to permit the application of Section 101(6).

5. Having filed an amended petition wherein she takes the position that since the Committee made its own tax [illegible]n on Form 1065, partnership form, as an apostol[illegible]ty, based on the theory that the income from th[illegible] restaurant operated by her was the income of the Committee, she then asserts that she was only required to show in her return her pro rata share of the entire year's income of the Committee. This invokes the application of Section 101(18).

THE CHURCH

A picture of Christ's Church of the Golden Rule can be gleaned from the following excerpts taken from the briefs. At page 1 of petitioner's reply brief we find this statement:

> "Christ's Church of the Golden Rule teaches that Christianity be actually lived and Christianity be applied to everyday life. Those engaged in its ministry apply Christianity to everyday life and the Church spreads its doctrines and teachings by having the public witness these applications to everyday life. It uses facilities for this purpose. Those dedicating Christianity is applied, those who come in contact with these Church applications will actually see it as something more than words, and a true way of doing."

On page 17 of petitioner's opening brief a portion of the Tax Court decision is quoted:

> "The Church has no church buildings. Its principal reliance is on having its members live in a manner exemplifying Christ's teachings, particularly by living in a selfless manner. Its student minister training projects, while engaging in commercial activities, were designed to permit the public to witness the application of Christ's teachings to everyday life. Thus the very means chosen by the Church to attain its spiritual purposes involved engaging in commercial activities through its principal temporal agency, the Committee . . ."

In 1948 the Church adopted a constitution which sets forth in Article I a declaration of faith. Article II deals with church organization. Articles III, IV

and V deal with the powers of the Senior Elder, Advisory Board of Elders and the College of Pastors. The Senior Elder is the "ecclesiastical head of the Church" with the power "to supervise and veto the acts of any other ecclesiastical officer, agency, or committee of the Church." The Advisory Board is elected by the convention and "shall serve only if confirmed by the Senior Elder." It is to be observed that the Board of Elders can only exercise the authority granted them "subject to the written consent of the Senior Elder." The College of Pastors have only "such powers and perform such duties as may be prescribed by the Senior Elder in writing."

Article VI deals with temporal agencies. Parts of this Article are as follows:

"1. The temporal agencies of the Church shall be under and subject to ultimate control by the ecclesiastical authorities of Christ's Church of the Golden Rule.

2. The temporal agencies of the Church, while subject to ultimate control by the ecclesiastical authorities, shall, insofar as may be practicable, be kept separate from the ecclesiastical agencies of the Church.

3. The officers, agents and members of the temporal agencies of the Church shall possess such ecclesiastical or other qualifications and be subject to such discipline and supervision as may be prescribed by the ecclesiastical organization of the Church, or by its canon laws.

4. The Senior Elder, with the advice of the Advisory Board, shall grant charters to the various

congregations, projects and other temporal activities upon such terms, conditions, and reservations as shall be determined by him. Any violation of such terms, conditions or reservations, or of the canon laws of the Church shall, if clearly shown—in accordance with his sole discretion—justify the Senior Elder in the suspension of such charter; or such charter, after hearing, may be declared forfeited by the judgment of an ecclesiastical court of the Church."

At this same time canon laws were adopted. Canon Law No. 3 is directed to secular and temporal administration. It appears that fundamentally there is no separation of ecclesiastical and temporal matters, for it is said "insofar as practical" there shall be maintained a separation of the two phases of the Church. It is obvious that in all things the temporal agencies are subservient to the ecclesiastical for it is stated in Canon Law No. 3:

"Determination of ecclesiastical matters by the duly constituted authorities of the Church shall be conclusive and binding upon the temporal agencies, even though such ecclesiastical matter directly or indirectly or incidentally affects matters of property, or property rights or authority or any temporal agency of any officer, agent or member of such agency."

Canon Law No. 4 requires that every project, agency and group, as a condition of its authority and right to be a part of the religious society, hold a charter from the ecclesiastical Church government.

The Canon Law seeks to bring the Church within the provision of Section 101(6) and (18) to the end that its income might be exempted, and donors exempted under Section 23(o). Canon Law No. 10 provides that no part of the income of any property, money or property right, of whatsoever kind or nature "shall ever inure to the personal profit or benefit of any person or persons," and that all income "shall always be used for the religious purposes of this Church." No. 11 prohibits the use of Church property for influencing legislation or for propaganda.

Canon Law No. 22—Definition of "Project" and "Project Managers" insofar as it deals with "projects," is as follows:

> "A project is any group, undertaking, or activity in which one or more persons under these canon laws undertakes to apply and illustrate Christianity as taught, construed and defined by the duly constituted Church Government to every day life. A project may or may not be owned in whole or in part by some temporal agency of the Church, or it may be owned by some individual and temporarily dedicated to such use without affecting, impairing or lessening the ownership of the individual therein."

It appears that in 1946 an agency known as the Elected Delegates Committee was created as a temporal agency of the Church, functioning under a charter from the Church, and handling the Church treasury. This is the agency which we refer to as the "Committee."

STATUTES INVOLVED

As we have analyzed the facts we conclude that in reaching our opinion we are required to construe and apply, or at least comment upon, the following sections of the *Internal Revenue Code of 1939:*

> *"Section 23. DEDUCTIONS FROM GROSS INCOME.* In computing net income there shall be allowed as deductions: . . .(o) Charitable and other contributions.—In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of: . . . (2) (as amended by Section 224(a) of the Revenue Act of 1939, c. 247, 53 Stat. 862) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any state or territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; . . . to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayers adjusted gross income . . . (26 U.S.C. 1952 ed., Sec. 23)"

> *"Section 25. CREDITS OF INDIVIDUAL AGAINST NET INCOME. . . .* (b) (as amended by Section 10(b) of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; Section 102(a) of the Revenue Act of 1945, c. 453, 59 Stat. 556;

and Section 201 of the Revenue Act of 1948, c. 168, 62 Stat. 110) Credits for Both Normal Tax and Surtax.—(1) Credits.—There shall be allowed for the purposes of both the normal tax and surtax, the following credits against net income: . . . (D) An exemption of $600 for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500, . . . (3) Definition of Dependent.—As used in this chapter the term 'dependent' means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer: . . . (26 U.S.C., 1952 ed., Sec. 25)"

"*Section 101. EXEMPTIONS FROM TAX ON CORPORATIONS.* The following organizations shall be exempt from taxation under this chapter: . . .

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; . . .

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross in-

come their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received. (26 U.S.C., 1952 Ed., Sec. 101)"

It is to be observed that each of the taxpayers, Grassmee and Riker, attached memoranda to their returns which in effect invoked the application of Section 101(18), wherein it was stated that the total net income of the Elected Delegates Committee of the Ecclesiastical Society of Christ's Church of the Golden Rule, an apostolic Religious Association, for the particular tax year was $217,001.54; that this divided between 575 members amounted to $377.39 each. "That this was not received as a dividend, but is reported under Sec. 101(18)."

In her original petition Grassmee invoked the provisions of Section 23(o) and Section 101(6). In her amended petition before the Tax Court she sought to bring herself under the provisions of Section 101(18). Riker's original position was that the earnings of the restaurant were her own and "that your petitioner made gifts of her income during the period covered by her return, to-wit, the taxable year ending September 30, 1948, in the amount of $8,959.11 to said Church for religious purposes only." By her amended petition she took the opposite position that all of the income of the business was "properly the income of the said committee of said Church," and as such not taxable under Section 101(18).

The necessity of passing upon certain of the questions raised by counsel can be eliminated at the outset by determining whether or not the restaurant, Your Food Fountain, operated by Riker, and the income therefrom, was the property of herself, or of the Committee. There has been considerable discussion on this score in the briefs. As we have said the record supports the conclusion that the business as well as the furniture and fixtures used in the business were at all times owned by Riker, and that the earned income was hers. What we have already said on this score would be sufficient but due to the importance of this conclusion we deem it proper to point out some of the straws indicating to us the direction of the wind was toward Riker's ownership.

1. Riker and her husband owned the physical equipment with which the business was opened and thereafter operated.

2. The testimony of Mrs. Huff, a student Minister in the Church, was as follows: "Well, as I recall, Mr. and Mrs. Riker were in business in San Bernardino, and they disposed of that business and took the fixtures from it and purchased this property out on East Base Line and built up the student ministry activity there."

3. The business license was issued at all times in the name of Riker.

4. She was the sole manager of the business and presumably had control of its business policies.

5. There is no evidence in the record that the Rikers ever transferred the business, or any of its assets real or personal, to the Committee or to the Church.

6. There was a summary proceeding in the bankruptcy matter to determine title and ownership to the business.

7. Riker and the trustees entered into an agreement permitting her to operate the business and retain the profits until such time as the question of ownership was determined.

8. The business operated in as many as three separate partnership arrangements between Riker and others, and finally on a percentage basis with a prospective purchaser.

9. Canon Law No. 22 of the Church provides that a project may be owned in whole or in part by the Church, or it may be owned by some individual.

10. Canon Law No. 4 provides that each project shall as a condition of its authority and right to be a part of the religious society, hold a charter from the Church. The record does not indicate that a charter was ever issued to Riker.

11. The theory of private ownership and operation was adopted by Riker in her original tax return and original petition to the Tax Court for redetermination of her tax. In her return she stated that the income from the business for the tax year ending Sep-

tember 30, 1948, was $8,959.11, and that she had contributed the entire sum to the Church.

Holding, as we do, that the Your Food Fountain business was owned and operated by Riker, that all of the receipts therefrom were hers, it follows that her paying over the entire receipts in the sum of $8,959.11 was a donation to the Church by way of gift. Now, was she entitled to a 15% deduction from her adjusted gross income for the taxable year ending September 30, 1948, under Section 23(o) of the Internal Revenue Code of 1939? The Commissioner refused to allow the deduction and in this was sustained by the Tax Court. Was error committed by the Commissioner and the Tax Court? We think not.

If the claim of both taxpayers for the 15% deduction is to be granted to them under Section 23(o) we must find that either the Church, or the Committee, qualifies under the section. In our opinion neither qualifies as such a religious organization as to render contributions or gifts deductible.

The exact wording of Section 101(6) is found in Section 23(o). It is obvious that there are three conditions precedent which must be met before either section is activated. The organization to which the donation is made must (1) be organized and operated for religious purposes, it (2) must be operated exclusively for such purposes, and (3) no part of its net earnings must inure to the benefit of any private shareholder or individual. As we see it neither the Church nor the Committee meets these three conditions precedent, nor

as a matter of fact does it meet any one of them. It is clear that the Committee, an agency entirely controlled by the Church, was created solely for temporal and business purposes, and that the constitution and canon laws contemplated and authorized the Church to engage in temporal and business affairs. The record shows that a wide scope of commercial activities was entered into. The church was not organized and operated exclusively for religious purposes for the record shows that it operated numerous commercial projects. It also appears that individuals shared in the benefits of its net earnings in that homes and subsistence were provided for them out of the Church treasury. As the Tax Court said, the very means chosen by the Church to attain its spiritual purpose involved engaging in commercial activities through its principal temporal agency, the Committee. The failure of the Church or the Committee to meet any of the three requirements would, and does, foreclose the taxpayers from the Section 23(o) exemption. Even though the Church and its members may have lauded the spiritual end of these enterprises and turned a blind eye to the profits end it remains a fact that much of the lifeblood of the Church came from the profit of purely business ventures.

The church takes the position that these commercial enterprises were training centers for its future ministry and as such designated these operations as "Student Minister Training Projects." Further, that by contact with the members of these student minister groups engaged in commercial activities the public

generally would come to know and appreciate the principles of the Church. The enterprise conducted by the taxpayer Riker was a restaurant and just how rapport on matters of religion, and particularly that form espoused by the Church, could be attained by patrons and others dealing with the restaurant is somewhat of a mystery.

The garb of a waiter or cook might cloak a sinner as well as a saint, and the brief and casual relationship between the student ministers and the patrons in and about the restaurant seems to be a poorly designed method to spread the fame of their order. To us it appears that this theory of disseminating knowledge and appreciation of the tenets of unselfishness and the application of the Golden Rule, so much a part of the creed of this particular Church, is questionable from a practical standpoint. We comment thus, not to take issue with the Church doctrine in this respect, buf for the more practical purpose of pointing out that so far as the public was concerned, the student ministers were no more than employees of the venture.

That Riker may have "instructed" the student ministers in the faith of the Church is another matter and, as we see it, does not in any manner weaken our position that the restaurant in which they worked was a privately operated commercial establishment. Nor did the fact that the student ministers receive no compensation for their labor, or that Riker donated the entire gross receipts of the business to the Church receiving back from it funds with which to pay the cost of operation and the subsistence of herself and the student

minister group, make the operation of the restaurant any less a commercial enterprise.

The record sustains the Tax Court which stated in its opinion:

> "Our findings of fact show that according to the constitution and canon laws of the Church the Committee was set up to handle temporal affairs of the Church. In carrying out this purpose it operated a restaurant, a laundry, a lumber mill, and various other commercial enterprises, which were its (the Church) principal sources of income during the years in question."

The Tax Court, in its decision, then went on to state:

> "In determining whether an entity is organized and operated exclusively for religious . . . purposes within the meaning of Section 101(6), Internal Revenue Code of 1939, in order to determine its qualification as a tax exempt organization this Court has denied exemptions to those organizations set up to engage in business activities, despite the fact that the income earned is to go to an exempt organization. So, even if we assume so far as this phase of the case is concerned, that the ecclesiastical society of the Church, the beneficiary of the Committee's earnings under the Church constitution, is a religious organization qualified under Section 23(o), this does not help petitioners."

We are of the opinion, too as the Tax Court and the Commissioner were, that there is no real distinction between the Committee and the Church. The Committee as such is not mentioned in the constitution or

canon law of the Church. It will be observed that Article VI of the constitution provides for the temporal agencies of the Church, and that these agencies "shall be under and subject to the ultimate control by the ecclesiastical authorities of the Church, and it is equally obvious from a reading of the constitution and canon laws that this means under the ultimate control of the Senior Elder, the Church head. The Elected Delegates Committee was created and organized in 1946 under the constitutional and canon law authority. Mrs. Huff, a Student Minister, testified as follows:

> "The Elected Delegates Committee is a temporal agency of the Church and it functions under a charter from the Ecclesiastical Church Government . . . it handles the Apostolic Community's common treasury."

In spite of the verbal dressing the Committee is not a separate entity as the use of the word "chartered" might have one believe for it must answer at all times to the authority of the Senior Elder, his word being final. The Committee, therefore, does not attain the status of a separate legal entity engaged in commercial enterprises the profit of which is turned over to the Church for religious purposes, such as the type of organization engaged in commercial activities for the benefit of a church or charity as we find in the so-called "feeder" situation. It is nothing more than the agent and arm of the Church and its acts are at all times the acts of the Church. This, then, puts the Church directly in business through its agency, the

Committee. The line of "feeder" cases and the rules of law therein announced have no application here. Stated in simple language we have present the following situation:

1. Riker owned and operated the restaurant known as Your Food Fountain as a private business for profit.

2. She donated the entire profits to the Church through its agent, the Committee;

3. The moneys so donated were commingled with all other moneys in the treasury of the Committee which was the treasury of the Church;

4. Then out of the Church's treasury there was plowed back into the restaurant business, through the agency of the Committee, sufficient sums of money to pay operation costs;

5. In addition to which further sums of money were advanced for the subsistence of the student minister group and Riker.

It is apparent that the amounts of money allocated to the commercial and religious side of the Church is a matter finally determined by the Senior Elder, who is designated in the Constitution and Canon Law as the spiritual head of the Church, but who by virtue of these same documents is also the controlling head of all of the business and commercial activities of the Church.

We conclude (1) that the Committee was not, and is not, a separate entity but is part and parcel of the Church, the activities of the Committee being those

of an agent for its principal; and (2) that the Church itself, being in part engaged in commercial activities and not devoted exclusively to religious matters does not come within the provisions of Section 23(o) permitting its donors to claim the exemption therein provided. By the same token the Church is not itself within the exempt classification contemplated by Section 101(6) so that even if we had found the restaurant venture to have been owned and operated by the Church instead of Riker it still would not be entitled to exemption. And there is still another reason, for to the extent that housing and subsistence were provided by the Church through its Committee, that provision of Section 23(o) to the effect that no part of the net earnings shall inure to the benefit of any private shareholder or individual, has been violated.

Taxpayers contend, based on their assumption that Your Food Fountain was a Church project, that Section 101(18) is applicable. Section 101 deals solely with exemptions from tax on corporations, specifying two types. Sub-section (6) deals with those organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. This is the type of corporation to which donors may make contributions and receive deductions from their net income to the extent of 15% thereof as provided for in Section 23(o).

Sub-section (18), by its terms, is applicable to "religious or apostolic associations or corporations" hav-

ing a common or community treasury even though such associations engaged in business for the common benefit of the members, if the members include in their gross income their pro rata shares, whether distributed or not, of the net income of the association for such year.

It is obvious that while sub-section (6) organizations are entirely exempt from taxation the effect of sub-section (18), while exempting the organization, merely shifts the taxes to its members who must include it in their pro rata share of the organization income in their separate tax returns. Then, again, it is only a "conditional" exemption for unless the members include their pro rata share of the income of the organization for the year the exemption does not apply, and must be paid in full by the organization.

Whereas we have some guides by way of case law as to the construction and application of Section 101(6) it is not so clear as to Section 101(18) which appears not to have been passed upon by the courts. It would appear, however, to be a fair assumption to say that Congress in adopting this section did intend to meet a new situation taxwise, and not merely to duplicate Section 101(6).

A meager legislative history on (18) refers to "apostolic organizations who have a community interest" and "put in all their property . . . and do a community business, run community farms, and all of the revenue is put in one pot and they are taxed as a corporation." Treasury Regulation 29.101(18)-1 dealing with Section 101(18) requires each associa-

tion or corporation claiming exemption as a religious or apostolic association or corporation under Section 101(18) to make a partnership tax return on Form 1065. One might assume, then, that Congress intended an association somewhat akin to the ordinary association or partnership in which each member has a definite, though undivided, interest in the business conducted for the common benefit of the members, as well as a common interest in the community treasury and property. The business and benefit mentioned appears to be something more tangible and worldly than spiritual comfort though the common community enterprise is to be related to or associated with a religious group and doctrine, and being under the aegis of that group. The Church with which we are here concerned would not fall within the exemptive provisions of Section 101(18). However, since we hold that the restaurant was a personal and individual venture rather than a Church activity our comment concerning Section 101(18) comes under the head of gratuitous remarks.

In conclusion we point out that the record supports the findings of the Tax Court in each and every respect, save and except as to what the respondent calls the "fundamental assumption" of the Tax Court that the restaurant business was an asset of the bankrupt Church. As hereinabove stated we find that on this score the record leads to the opposite conclusion, namely, that the business belonged to and was operated by Riker. The taxpayers, Grassmee and Riker, are not, in our opinion, entitled to any of the deductions claimed under Section 23(o), Section 25, Section 101(6), 101(18).

Before concluding this opinion we feel that the following landmark cases in this particular area of the tax law might well be reviewed.

In *The John Danz Charitable Trust v. Commissioner of Internal Revenue,* (9th Cir.) 231 F.2d 673, decided October, 1955, the court was reviewing a decision of the Tax Court. The questions were (1) whether the trust, which was authorized to and did conduct business for profit, was "organized and operated exclusively for . . . charitable . . . purposes," and thus exempt from tax under Section 101(6) of the Internal Revenue Code, simply because the trust fund was payable to such exempt organizations as Danz, one of the grantors, should designate; and (2) whether the trust income for the taxable years, not actually paid to charitable organizations during the taxable years, was pursuant to the trust instrument, "permantly set aside" for charitable purposes during the taxable year and thus deductible under Section 162(a) of the Code.

The court said that the trustees were not intended to act as a religious or charitable institution. The trust agreement provided that when designations were made for charitable, religious, etc., purposes, they were to be made only to tax exempt organizations under Section 101, and also of the type specified in Section 23(o) so that the contribution to such beneficiary would be deductible from income and exempt from estate and gift tax. During the years following the creation of the trusts various forms of speculative and profit producing businesses were engaged in.

The Tax Court held that being trusts they were not exempt under Section 101(6), nor entitled to the exemption under Section 162(a).

The Court at page 675 referred to its opinion in *Ralph H. Eaton Foundation v. Commissioner of Internal Revenue* (9th Circ.), 219 F.2d 527, citing therefrom as follows:

> "The articles state that the purpose of the corporation is to foster and promote religious, charitable and educational enterprises, and that it does not contemplate pecuniary gain or profit to the members thereof. Clearly, however, the corporation itself was not intended to operate and did not operate as a religious, educational or charitable institution. What was purposed was only that the profits from its various business activities would be turned over to such institution. In a word, petitioner is a 'feeder' corporation whose principal activities have not the remotest connection with any religious, charitable or educational enterprise.
>
> The record shows that it engaged actively and exclusively in various commercial or business enterprises, namely, farming, selling of real estate lots, the selling of sports clothes, and in a construction business. . . . All of the latter had to be and were engaged in activities which carried out the purposes and ideas for which petitioner had been established. . . . But assuming the function of turning over the profits was an activity or operation it certainly was not the principal one. We agree with the Fourth Circuit (United States v. Community Services, 189 F.2d 421) that the word 'exclusively' as used in the statute must be given effect."

In commenting upon the word "exclusively" as used in Section 162(a), Title 26, U.S.C.A., the court in the Danz case said:

> "If exemption is sought under the second clause, the attempt is futile. Otherwise, no meaning is given to the word 'exclusively.' It is plain that these funds, when mingled with the funds of private trusts for business or speculative purposes and considering the risk of loss, were not used exclusively for religious, charitable or other like purposes. . . . The mere fact that the remaining funds, after partial or complete recapture from the channels of business or the marts of trade, whenever in a future more or less removed, in the discretion of the trustees, they chose to pay these over, would necessarily be paid to institutions defined as charitable, does not satisfy the statute. There is another circumstance which compels consideration. John Danz, as settlor, was under no compulsion to exercise his power to designate charitable beneficiaries. If he failed to do so, the funds might during his life have been devoted 'exclusively' to business ventures and commercial pursuits."

In speaking of the "ultimate destination" test this court said in the Danz case:

> "The 'ultimate destination' test is applicable in strictness to other phases of the statute. It is not repudiated under circumstances which call for its application. But here an attempt to force the facts to fit the doctrine does violence to the language of the statute."

The court commented further on the word "exclusively":

> "It is difficult to see how a fund is to be 'exclusively' devoted to charitable purposes in any event if a part of it is to be used year after year for speculative and business ventures in conjunction with funds which redound to the profit of private individuals. Money is not 'used' for charitable purposes when thus traded with. When any portion of this fund is so used, it would be a contradiction in terms to say that it was devoted 'exclusively' to charitable purposes.
>
> . . . But here, 'exclusively' means that the fund cannot be devoted to any other purpose, but the portion claimed as exempt must be 'paid or permanently set aside' during the 'taxable year' to a particular charity."

In his dissent in the Danz case Judge Pope pointed out that this case was to be determined under Section 161 and the deductions allowed under Section 162(a), and not under the provisions of Section 101(6) under which section the Eaton Foundation case, supra, was decided. Said Judge Pope:

> "A difference in phraseology in Section 101(6) and Section 162(a) suggests a different congressional intent with respect to corporations and foundations on the one hand and trusts on the other. Section 101(6) which commanded the decision in the Eaton Foundation case refers to corporations or foundations 'organized and operated exclusively for religious, charitable,' etc. purposes. The words which I have italicized appear to me to be key words. Because Eaton Foundation was not operated exclusively for charitable purposes, it was not entitled to the exemption claimed."

The case of *Ralph H. Eaton Foundation v. Commissioner of Internal Revenue,* (9th Cir.), 219 F.2d 527, was decided in February of 1955. The question there presented was whether a corporation engaged in ordinary business activities for profit is entitled to exemption under Section 101(6) solely by reason of the fact that its profits are payable to religious, charitable or educational enterprises. The charter of the corporation stated that its purpose was to foster and promote religious, charitable and educational enterprises without pecuniary gain or profit to the members. Citing:

> "Clearly, however, the corporation itself was not intended to operate and did not operate as a religious, educational or charitable institution. What was purposed was only that the profits from its various business activities would be turned over to such institutions. In a word, petitioner is a 'feeder' corporation whose principal activities have not the remotest connection with any religious, charitable or educational enterprise."

Commenting on the "ultimate destination" test the court said:

> "The Ninth Circuit has not gone overboard in its application of this statute (Section 101(6)) Cf. Bear Gulch Water Co. v. Commissioner, 116 F.2d 975. In the more recent case of Squire v. Students Book Corporation, 9 Cir., 191 F.2d 1018, 1020, we held that an incorporated bookstore was owned and entirely controlled by Washington State College and whose earnings were devoted solely to the purposes of that institution was exempt under Section 101(6). We observed that the court had not committed itself to the ultimate

destination test frequently applied elsewhere. We said that 'Resolution of the case before us does not depend wholly on the ultimate destination of the taxpayer's profits. The business enterprise in which taxpayer is engaged obviously bears a close and intimate relationship to the functioning of the College itself.'"

"A number of the circuits have given the statute very broad or liberal scope, applying in cases more or less analogous to the present what is known as the ultimate destination test. At this late date no useful purpose would be served by dwelling on those decisions. The bulk of them are cited and to a degree analyzed by the Fourth Circuit in United States v. Community Services, 189 F.2d 421, 424, certiorari denied 342 U.S. 932, 72 S.Ct. 375, 96 L.Ed. 694, where the ultimate destination test was rejected. The court, speaking through Judge Dobie, thought that the taxpayer involved was in effect organized and operated for two purposes: (1) to engage in commercial business for profit, and (2) to turn over the profits realized from those commercial activities to charitable organizations. It is said that 'the second purpose is charitable; the first purpose clearly is not.' To qualify for the exemption here, the corporation must be 'organized' and operated *exclusively* for . . . charitable . . . purposes."

In affirming the Tax Court in denying the exemption to the taxpayer the court, in the Eaton Foundation case, concluded:

"In the case before us it would appear that none of the activities in which petitioner actually engaged was charitable or religious. All were of a

business or commercial nature. But assuming the function of turning over the profits was an activity or operation it certainly was not the principal one. We agree with the Fourth Circuit that the word 'exclusively' as used in the statute must be given effect."

Another Ninth Circuit case is *Squire v. Students Book Corp.*, 191 F.2d 1018. The court affirmed the Tax Court holding that the exemption applied under the facts of this case. The court pointed out that since the decision in *Roche's Beach, Inc. v. Commissioner*, 2 Cir., 96 F.2d 776, most of the circuits confronted with this type of problem "appear" to have applied the "ultimate destination" test in determining whether the profits are exempt under Section 101(6),

"or (as the 2nd Circuit court said), to put the matter another way, if the only purpose of the enterprise is to devote its profits to charitable or educational ends the exemption has been usually held to attach. It has been thought that the exemption, unlike exemption statutes generally, should be liberally construed because of the gain to the public through the encouragement of charity. In two very recent decisions, reaching opposite conclusions, namely, United States v. Community Services, 4 Cir., 189 F.2d 421, and C. F. Mueller Co. v. C.I.R., 3 Cir., 190 F.2d 120, the subject has been extensively reviewed and the authorities cited and discussed. We think it unnecessary again to plow this field, more particularly since Congress in the Revenue Act of 1950 has declared a different rule applicable for taxable years commencing after December 31, 1950."

Here again the Ninth Circuit disavowed the adoption of the ultimate test theory as the sole test, even though in *Smyth v. California State Automobile Ass'n*, 9 Circ., 175 F.2d 752, it appeared that the court had given this test its tacit approval. It is apparent that the Circuit insists on maintaining its independence for in deciding the Students Book Corporation case it said:

> "Resolution of the case before us does not depend wholly on the ultimate destination of the taxpayer's profits. The business enterprise in which taxpayer is engaged obviously bears a close and intimate relationship to the functioning of the College itself. In some of the cases adhering to the general rule no similar relationship is discernible. . . . All things considered, we are not disposed to hold that the trial court was wrong in its disposition of the case."

United States v. Community Services, Inc., 189 F.2d 421, was a Fourth Circuit case decided in 1951. In this case it was held that a nonstock membership corporation, a charitable corporation under the laws of that state of incorporation, operating for the convenience of the employees of a textile manufacturing company operating canteens, coal and wood yards and other services, with no sales to the general public, was not entitled to the claimed exemption, as it was not "organized and operated exclusively for charitable purposes." The exemption was claimed under Section 1426(b)(8) the wording of which is identical with Section 101(6). The court pointed out that there were three conditions to be met in order to come under the

provisions of the section, namely: (1) the corporation must have been "organized and operated exclusively for religious, charitable, scientific, literary, educational purposes; (2) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (3) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." Citing from page 424:

> "The long standing implementing Treasury Regulations (Sec. 402.215 of Regulations 106) make it clear that these requirements constitute separate conditions precedent to exemptions, each of which must be met."

The court said that Community Services met the second and third requirements, and then—

> "It is the first condition, namely, that the corporation be 'organized and operated exclusively for religious, charitable, scientific, literary or other educational purposes' with which we are concerned."

It was found that this first condition was not met by Community Services, and that the taxpayer was organized only for the purpose of engaging in commercial businesses, then to turn over its profits to charitable organizations. "To qualify for the exemption here the corporation must be organized and operated *exclusively* for . . . charitable . . . purposes" said the court, citing the following from the *Better Business Bureau case*, 326 U.S. at page 283:

> "This plainly means that the presence of a single non-educational purposes, if substantial in nature,

> will destroy the exemption regardless of the number or importance of truly educational purposes."

Citing again from the Community Services decision at page 425:

> "For tax exemption purposes, the charitable nature of the distributees of its income cannot be attributable to the taxpayer. The corporation earning the income and claiming the exemption, rather than the recipients of the income, must be organized and operated exclusively for charitable purposes. Otherwise a purely commercial corporation could claim the exemption, if all its stock were owned by an exempt corporation, which would receive, as dividends, all the net earnings of the commercial corporation. Clearly this is not the law. (Cases cited) Manifestly, a corporation, engaged in commercial activities, if exempt from federal taxes, would have a tremendous economic advantage over competitors in the same field. Such a corporation could effectively eliminate competitors, actual and potential, since it could undersell corporations, whose earnings are subject to diminution by federal taxation. It is difficult to believe that Congress intended to countenance such a situation."

The district court, in Community Services, pointed out that in construing this type of exemption statute the statute should be construed broadly and liberally to effect its beneficent purpose, encouragement of charity, religions, education. While the Circuit Court did not expressly repudiate this rule of construction, it did so impliedly referring again to the language of

Justice Murphy in the Better Business Bureau case, 326 U.S. 279, at page 283:

> "Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such exemptions are to be ignored."

The court in Community Services, at page 426, discusses the 1950 amendment to Section 101 which provides that an organization operated for the primary purpose of carrying on a trade or business for profit will not be exempt under the provisions of this section "on the ground that all of its profits are payable to one or more organizations exempted under this section from taxation." Reference is also made to House Report No. 2319, 81st Congress, 2nd Session, pages 36-37, 41-42, which contains a rather interesting discussion on the purpose of the amendment. The committee pointed out that several of the circuits, citing cases, had already interpreted and applied Section 101(6) as though it contained the proposed amendment, which was adopted in 1950. The excerpt from the Committee report concludes:

> "The amendment is intended to show clearly what, from its effective date, the rule is to be, without disturbing the determination in present litigation of the rule of existing law."

At page 427 of the Community Services case the court discusses the often cited and relied upon decision in the Trinidad v. Sagrada case, 263 U.S. 578, in which it was held that the corporation, itself a re-

ligious institution, in selling wine and other articles was doing so as an incident to its religious work; and that such activities "do not amount to engaging in trade in any proper sense of the term." Referring to the Trinidad case, the Community Services court said, that the force of the Trinidad case has been weakened, in addition to the facts of the case, by more recent decisions of the courts.

The decision of the Tax Court is affirmed.

DENMAN, Chief Judge:

I concur in the holding that Mrs. Riker operated the Your Food Foundation in her own interest and that the decision of the Tax Court that she is taxable on its income be affirmed.

I also concur in the holding that Mrs. Grassmee's income from her earnings is taxable and that she is not entitled to a deduction for the dependency of her mother.

I further concur in the holding that neither taxpayer is entitled to a charitable deduction for her contributions to the church corporation under 26 U.S.C. § 23 (o) providing for deduction for gifts to it if no part of its net earnings "inure to the benefit of any private shareholder or individual," since the church in fact supports its members it is not such a religious corporation.

I concur in affirming on the above grounds.

(Endorsed:) Opinion and Concurring Opinion. Filed Apr. 12, 1957. Paul P. O'Brien, Clerk.

No. 15072

United States Circuit Court of Appeals
for the Ninth Circuit

Peggy Lou Riker and Freda H. Grassmee,
Petitioners,

vs.

Commissioner of Internal Revenue,
Respondent.

Upon Petition to Review a Decision of
The Tax Court of the United States.

JUDGMENT

This Cause came on to be heard on the Transcript of the Record from The Tax Court of the United States, and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Decision of the said Tax Court of the United States in this Cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and entered April 12, 1957. Paul P. O'Brien, Clerk.